

266.1 DOUGLAS T COLE

COUNTY: SISKIYOU

CAT: 1, VOL: 1, ID: A029449

CAT: CORRESPONDENCE



BEGIN DATE: 3/27/1989

A029449 % 1 % 1

COUNTY: SISKIYOU

CAT: 1, VOL: 1, ID: A029449

CAT: CORRESPONDENCE



BEGIN DATE: 3/27/1989

A029449 % 1 % 1

END DATE: 9/30/2000

APPLICATION 29449 PERMIT _____ LICENSE WR-4

APPLICANT Robert E. & Mary Judith Young

DATE FILED 3-27-89 MAPS FILED 3/27/89-A COUNTY NO. 47 FEE \$1000.00

FORMS SENT 1/28/2000 Notice, resent notice on 3/17/00;

PROTESTS	ANSWERED	DISMISSED OR WITHDRAWN	ACCEPTED
<u>3/8/00 NATIONAL FISHERIES SERVICE</u>			<u>3-17-00</u>
<u>3/20/00 DFG</u>			<u>4-9/00</u>
<u>3/20/00 T. JAMES FISHER; J.W. FISHER LOGGING COMPANY; PHYCIS FISHER</u>			<u>0-12-00</u>
<u>3/20/00 KOURAO FISHER</u>			<u>3-17-00</u>
<u>3/10/00 KLAMATH NATIONAL FOREST</u>			<u>3-17-00</u>
<u>8/25/00 OSPA</u>			<u>9-15-00</u>

REMARKS 11-17-94 Assign to Doug Cole, Heidi Cole, Norman Cole & Carol Cole; 4-4-00 STATEMENT OF POSTING NOTICE REC'D,

RECORD OF FEES

APPLICATION 3-27-89 / \$100.00 - 5-2-89 \$1000.00 ANNUAL

PERMIT _____ EXTENSION _____ CHANGE _____

RECORD OF FOLDERS

1ST FOLDER _____
2ND FOLDER _____
3RD FOLDER _____
4TH FOLDER _____

OTHER FILINGS OF APPLICANT: 29450

WR 2 (7/82)



Cal/EPA

State Water
Resources
Control Board

Division of Water
Rights

901 P Street
Sacramento, CA
95814
(916) 657-2167
FAX (916) 657-1485



Pete Wilson
Governor

MEMORANDUM

TO: Files 29449 and 29450

FROM: Christopher O. Murray
WRC Engineer
DIVISION OF WATER RIGHTS

DATE: 6-5-98

SUBJECT: INSPECTION OF MARBLE MOUNTAIN RANCH'S DIVERSION
FACILITIES

As indicated in the preceding Contact Report dated 6-2-98, Mr. Cole has cancelled our meeting at his project site for 6-3-98. Basically, this trip was scheduled to assist Mr. Cole in determining how to proceed in order to either prove the extent of his pre-1914 claim or to continue processing these applications. The only piece of information which I needed was the rate at which he is currently diverting water. Because I had scheduled this trip to Mr. Cole's site in Somes Bar, I had scheduled to meet with DFG in Seiad Valley on another project the following day.

Since I had to drive to Seiad Valley anyway, I decided to stop off and measure the amount of water flowing through Mr. Cole's diversion facilities. I am familiar with the location of his diversion ditch by virtue of the fact that I visited the site and inspected the ditch with Doug Cole's father-in-law on September 23, 1997. I did not take a flow measurement during that visit due to time constraints. Mr. Cole's diversion ditch lies entirely upon Forest Service property. Consequently, no permission from the Cole family is required to inspect the site or measure the flow.

I hiked to the POD from Highway 96, following Stanshaw Creek until I reached the diversion ditch. I photographed the diversion structure and the ditch in various places. I noted the presence of a rainbow trout approximately 9 inches in length utilizing the buried sediment trap for cover. I located an area of the ditch which had a very uniform cross section and a smooth bottom. From here I measured the flow in the ditch using a pygmy meter. I estimated the velocity prior to initiating the flow measurement as a check on the



Our mission is to preserve and enhance the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations.

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flow rate I obtain with the instrument. I estimated the velocity to be approximately 1 foot/second (probably a little more than that). Based on a quick calculation of the cross sectional area (2.54 Sq. Ft.) I obtained an estimated flow rate of approximately 2.5 cfs. The flow rate I obtained using the pygmy meter matched ~~very~~ closely my estimate of the flow rate. The measured flow rate was determined to be 2.4 cfs. This flow was measured near the point of diversion. The ditch is a mile or so long, and some conveyance loss is expected over that distance. The water near the terminus of the ditch appeared to be flowing at a rate comparable to the beginning of the ditch. I would regard the conveyance losses to be a small fraction (20% maximum for loss of 0.5 cfs) of the flow of the ditch although the flow was not measured near the penstock. The entire flow of the ditch was being diverted through the penstock.

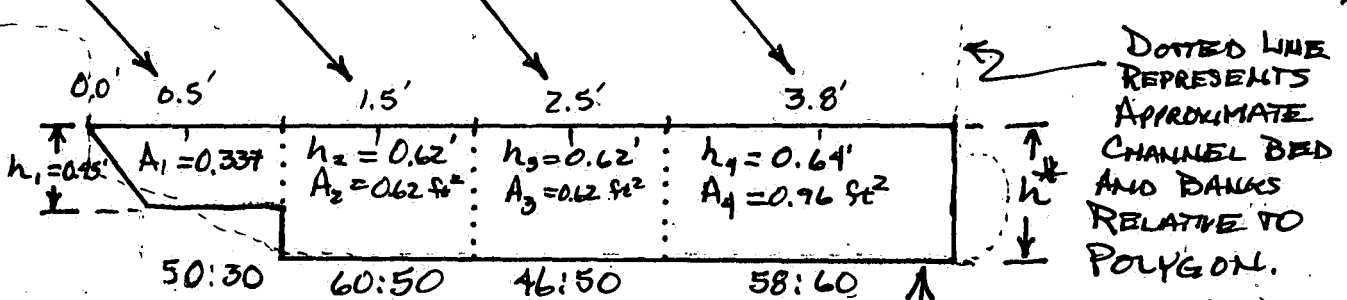
FIELD NOTES FROM FLOW MEASUREMENT OF COLE'S DIVERSION DITCH ON STANSHAW CREEK.

6-4-98 6:15 AM

SISKIYOU COUNTY

FLOW IN DITCH APPEARS TO BE APPROXIMATELY 1/4 TO 1/3 OF THE FLOW IN STANSHAW CREEK.

LOCATIONS OF PYGMY METER READINGS (AS MEASURED FROM LEFT BANK OR DOWNHILL BANK)



$V_1 = 0.619 \frac{ft}{s}$ $V_2 = 0.845 \frac{ft}{s}$ $V_3 = 1.09 \frac{ft}{s}$ $V_4 = 1.04 \frac{ft}{s}$
 $Q_1 = 0.21 \frac{ft^3}{s}$ $Q_2 = 0.52 \frac{ft^3}{s}$ $Q_3 = 0.68 \frac{ft^3}{s}$ $Q_4 = 1.0 \frac{ft^3}{s}$

POLYGON REPRESENTATION OF CHANNEL CROSS SECTION AT LOCATION OF FLOW MEASUREMENT

$Q_{TOTAL} = 2.41 \text{ cfs}$

* THE DITCH APPEARED TO BE SIGNIFICANTLY DEEPER DURING MY 9-23-99 VISIT TO THIS SITE. APPARENTLY SIGNIFICANT SEDIMENTATION TAKES PLACE DURING THE WINTER DIVERSION SEASON.

**STATE WATER RESOURCES CONTROL
BOARD
DIVISION OF WATER RIGHTS**

CLOSING FORM FOR FILE FOLDERS

FILE: A029449

SUBJECT: CORRESPONDENCE

FOLDER: CAT. 1 - VOL. 1

FROM: 03/27/2000 TO 09/30/2000

FOR SUBSEQUENT CORRESPONDENCE SEE FOLDER: VOL. 2

(INCLUSIVE DATES MUST ALSO BE ENTERED ON FOLDER LABEL)



State Water Resources Control Board

AD 29449
SURNAME/FILES



Winston H. Hickox
Secretary for
Environmental
Protection

Division of Water Rights
1001 I Street, 14th Floor • Sacramento, California 95814 • (916) 341-5377
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 341-5400 • Web Site Address: <http://www.waterrights.ca.gov>

Gray Davis
Governor

In Reply Refer to:
363:MC:262.0(47-40-01); A029449

AUG 22 2002

Klamath Forest Alliance
c/o Law Offices of Donald B. Mooney
129 C Street, Suite 2
Davis, CA 95616

Dear Mr. Mooney:

WATER RIGHTS COMPLAINT OF THE KLAMATH FOREST ALLIANCE AGAINST THE COLES REGARDING DIVERSIONS FROM STANSHAW CREEK IN SISKIYOU COUNTY

Staff of the Division of Water Rights (Division) has completed their review of your letter of June 24, 2002 regarding the subject complaint. You indicate in this letter that you and your client disagree with the conclusions reached by Complaint Unit staff, as expressed in their letter and Staff Report of Investigation dated May 23, 2002. After review of both the Staff Report of Investigation and your letter, I have concluded that further action with respect to your client's complaint is not warranted, and I have directed the Complaint Unit to close this complaint. The supporting rationale for this action is described below.

Unauthorized Diversion of Water – You contend that the Division previously determined that any pre-1914 appropriative right held by the Coles is limited to approximately 0.11 cubic feet per second (cfs). Regardless of past letters sent by the Division containing estimates of what could be diverted pursuant to a pre-1914 appropriative right claim, the Division has no adjudicatory authority to quantify such a claim. Only the courts can make this determination. The most recent evidence submitted by the Coles and their legal counsel indicates that diversion of water from Stanshaw Creek into their ditch, and the subsequent use of this water for irrigation and domestic purposes at the Marble Mountain Ranch, was initiated prior to 1914 using at least as much, if not more, water than is used today. All available evidence suggests that the diversion and use has been maintained in a diligent and continuous fashion ever since. Consequently, we believe that a court would find that the Coles have a valid claim of a pre-1914 appropriative right to divert water for the full irrigation and domestic uses currently maintained, including reasonable conveyance losses.

While the Cole's current diversion of water for power purposes is not technically covered by a permit, this diversion and use has been ongoing for almost 60 years. Diversions prior to a determination regarding issuance of a permit are very common, especially for long-standing diversions such as the Cole's. The State Water Resources Control Board (SWRCB) has discretion whether to take enforcement action against an unauthorized diversion of water. Upon reviewing a complaint, the SWRCB may decide not to take enforcement action, or to defer consideration of enforcement. The SWRCB may consider several factors when deciding whether to pursue enforcement. One factor the SWRCB weighs is the willingness of the water diverter to legitimize the diversion. The SWRCB may choose not to initiate enforcement against a person who files an application promptly upon notification of the complaint, and then

California Environmental Protection Agency

"The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web page at <http://www.swrcb.ca.gov>." 000180

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DWR 540

mc 8/19/02 CAR 8/19/02 [Signature] 8/21/02

Klamath Forest Alliance

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AUG 22 2002

diligently pursues the application, complies with all application requirements and requests for information, and cooperates with SWRCB staff. While the Cole's application (A029449) has been pending for an extraordinarily long time, there is no indication in the application file that the Coles have not pursued approval of their application in a diligent fashion.

Potential Injury to Other Uses of Water - Another important factor in considering enforcement is the extent of injury caused by the water diversion. If a complaint investigation shows the unauthorized diversion is causing little or no injury to established right holders or to public trust values, the SWRCB may decide *not* to take enforcement action. The SWRCB may also consider the degree of hardship that enforcement action would impose on persons who rely on the diversion of water when it decides whether to take enforcement action in response to a complaint. Based on available evidence and rationale described in the Staff Report of Investigation, Complaint Unit staff concluded that there would be little potential for harm to other diverters or public trust resources if the Coles were allowed to divert water for power purposes, as long as a minimum bypass flow is maintained similar to that occurring during their investigation. You disagree with this conclusion, and make reference to the professional opinions of staff for the National Marine Fisheries Service, Department of Fish and Game, Karuk Tribe, and Humboldt State University. While we have received copies of these opinions, the evidence and logical rationale on which these opinions are based has not been submitted. Consequently, I believe the *prima facie* evidence utilized by Complaint Unit staff is more persuasive. Asking the Coles to terminate their diversion would also cause severe economic hardship on them without providing much if any benefit to the instream resources.

I do agree with you that the Cole's application has been pending for far too long. This application has been noticed and protests received. I doubt the parties will be able to resolve these protests amicably amongst themselves. The next steps in the process would be to complete an environmental review of the project pursuant to the California Environmental Quality Act (CEQA), and then proceed to protest resolution via either a field investigation or formal hearing. I have directed the Division's Environmental Section to give as much priority as possible to this application so that final resolution of the protests can be achieved as soon as feasible. I have also asked the Division's Application and Environmental units to send copies of all correspondence to you so that you will be kept apprised of the progress in this matter.

In the meantime, I expect the Coles to maintain a minimum bypass, as described in the Staff Report of Investigation. Failure to do so could result in a reevaluation of the need for enforcement action prior to a final determination of the Cole's request for a permit.

If there are any questions regarding this matter, please contact Charles Rich, Chief of the Division's Complaint Unit, at (916) 341-5377.

Sincerely,

ORIGINAL SIGNED BY

Edward C. Anton, Chief
Division of Water Rights

cc: See next page.

Klamath Forest Alliance

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AUG 22 2002

cc: Mr. Doug and Mrs. Heidi Cole
c/o Jan Goldsmith
Kronick, Moskovitz, Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814-3363

Mr. Doug and Mrs. Heidi Cole
92250 Highway 96
Somes Bar, CA 95568

Department of Fish and Game
Environmental Services
Attention Mr. Ron Presley and
Jane Vorpapel
601 Locust Street
Redding, CA 96001

National Marine Fisheries Service
Santa Rosa Field Office
Attention Tim Broadman and
Margaret Tauzer
777 Sonoma Avenue, Room 325
Santa Rosa, CA 95404

William M. Heitler, District Ranger
U.S. Department of Agriculture
Orleans Ranger District
P.O. Drawer 410
Orleans, CA 95556-0410

Mr. Jim De Pree
Siskiyou County Planning Department
P.O. Box 1085
Courthouse Annex
Yreka, CA 96097

Mr. Konrad Fisher
3210 Klingen Road NW
Washington, D.C. 20008

Karuk Tribe of California
Department of Natural Resources
Attention Mr. Toz Soto
P.O. Box 282
Orleans, CA 95556

bcc: Larry Attaway, Ross Swenerton
MContreras\lfischer 8/16/02
U:\Comdrv\MContreras\KFA v Cole appeal rejection letter

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State Water Resources Control Board



Winston H. Hickox
Secretary for
Environmental
Protection

Division of Water Rights
901 P Street • Sacramento, California 95814 • (916) 657-0765
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 657-1485 • Web Site Address: <http://www.swrcb.ca.gov>
Division of Water Rights: <http://www.waterrights.ca.gov>

Gray Davis
Governor

In Reply Refer
to:331:YM:29449

SEP 15 2000

California Sportfishing Protection Alliance
c/o 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

Your protest has been accepted. No further action is required by you at this time.

We have accepted the protests based on environmental considerations from (1) National Marine Fisheries Service, (2) Department of Fish and Game, (3) Klamath National Forest, and (4) Konrad Fisher. Division staff will prepare a California Environmental Quality Act (CEQA) document for the application. When issued, you will be notified for the opportunity to review and comment as a condition of dismissal of your protest. Therefore, the applicant is not required to answer your protest at this time.

If you have any questions, please call me at (916) 657-1965.

Sincerely,

ORIGINAL SIGNED BY: LLA

Yoko Mooring
Sanitary Engineering Associate
Application Unit

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

YMOORING:ym/nreyes/9/14/00 u:\achu\29449CSPA Control 15398

SURNAME

CCA 9-15-00
for ym
also reviewed by EAS

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FILE
WR-4
29449

State Water Resources Control Board

CONTACT REPORT DIVISION OF WATER RIGHTS

SUBJECT: A029449, Cole

DATE: 08/28/2000

TIME: 14:30

DIVISION PERSONNEL: Robert E. Miller

INDIVIDUAL (S) / AGENCY CONTACTED: Konrad Fisher
Private - Protestant

TELEPHONE NUMBER: (530) 244-0909
E-MAIL ADDRESS: konradfisher@yahoo.com

CONVERSATION DESCRIPTION:

T/C from Konrad Fisher. He said that the water level had dropped 3 inches in Stanshaw Creek and that it had left their pump high and dry, and almost burned them up. He wanted an agency to go out and disassemble Mr. Cole's diversion dam (the diversion dam is a pile of rocks). YM directed him to DFG, but they said the Board should be responsible for doing that. I told him that the Board would not go out and do that, especially since the Fisher's do not have any claim to the water they divert on file with the Board.

KF then asked for me to send him a form for their riparian claim (Statement of Diversion and Water Use). I told him that he should have received that already b/c their protest on injury to prior rights would not be accepted until they submitted a Statement to the Board. He did not know we had sent him the forms already (they were sent to his attorney, Jeffery Swanson).

He then asked what the latest status was on the Cole Application. I told him that I had produced an Environmental Field Report and that we are now waiting for recommendations from DFG and NMFS. He asked for a copy of the Report, which I sent via e-mail.

ACTION ITEMS: I emailed the Environmental Report, and have since emailed him Cole's Notice (per KF's later request), and a letter describing their riparian claim and what needs to be done for us to accept the Fishers' protest on injury to prior rights.

ATTACHMENTS: Copies of ~~two~~ *three* emails I have sent KF.

SURNAME	PFL/MA REN 8/29/00			
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From: Robert E. Miller
To: "konradfisher@yahoo.com".mime.Internet
Date: 8/30/00 11:04AM
Subject: Re: enforcement & unexercised riparian

Konrad,

It is my understanding that you do have an exercised riparian right, and that riparian right IS senior to an appropriated right. To get in to the Protest process, file a 'Statement' with current use. You'll get a 'Supplemental Statement of Diversion and Use' form sent to you every three years and increases can be documented on that form. Keep in mind that an engineer may want to see the project to insure that you do have a valid riparian claim and that current or future use is reasonable and beneficial.

Also keep in mind that NMFS has been known to cite riparian users for the take of endangered species (in your case, coho salmon). If they got pushy, they can do the same for Cole, but only because less water is in the stream, an indirect effect. A direct 'take' would be sucking up a coho into a pump or diversion ditch. With the current passage problems at Highway 96, they would have problems proving this for Cole's diversion. However, I believe that your Point of Diversion is within the reach of coho habitat. Is your intake screened? Three-thirtysecondths of an inch (3/32") is the screen size they are looking for.

For complaints, call the Water Rights information desk at (916) 657-2170. The normal Complaints Engineer is on vacation until Sept. 25, but the info desk should be able to help you out. You can also go to the website I sent you yesterday (<http://www.waterrights.ca.gov/>) and click on 'Water Rights Information', then 'Water Right Application Forms', then 'Complaint Forms'. Unfortunately, the 'How to File a Complaint Booklet' is not yet available online, but the info desk should be able to send you one.

Also note that Water Rights are not necessarily my specialty. That is what the engineers are for; I am in the environmental section. I have no problem helping you along this process; it's not simple and I understand the short time you have left to act on the Protest, and I am aware of the fact that Yoko is not in between now and your deadline; she'll be back on September 5th. The key is to get the 'Statement' in, along with anything else Yoko asked for in the letter (it was probably signed by Harry Schueller), before the deadline of September 2.

Good luck and I hope I've helped out,
Rob

>>> konrad fisher <konradfisher@yahoo.com> 08/29/00 08:07PM >>>

Rob,

Thanks again for warning me before our protest was tossed. I found the language to which I referred in the CA constitution and just wanted to make sure we take the necessary steps to retain our unexercised riparian right. The CA constitution says riparian rights apply "for the purpose for which such lands are or may be made adaptable." Given this language and the explanation given in a water law book I have been reading, I concluded that an unexercised riparian right was senior to appropriated rights. If this is so, I just wanted to be certain that there is no mechanism through which we can or should document our unexercised riparian right.

I also wondered if there is any formal complaint process we should employ to document and reverse the recent change made to the diversion that dried up our domestic water supply. According to our caretaker, the creek dropped 3 inches exposing the water intake and leaving his house dry. USFS and DFG won't put the water back in the creek and it seems impractical for SWRCB to drive five-plus hours to enforce it when it could easily happen again. What to do what to do?
Thanks again for your time.

Best,
Konrad Fisher

Do You Yahoo!?
Yahoo! Mail - Free email you can access from anywhere!
<http://mail.yahoo.com/>

CC: Yoko Mooring

From: Robert E. Miller
To: Konrad Fisher
Date: 8/29/00 10:10AM
Subject: Cole Notice and Riparian Statement

Mr. Fisher,

I've attached a MS Word version of the Renotice of Cole's Application. This info is also available at www.waterrights.ca.gov. Go to 'Water Right Public Notices', then 'Application Notices'. They are listed by Application number (A029449), County, Applicant name, and Date of Notice (03/17/00). You'll see that this is a Renotice, b/c the first Notice on 1/28/00 wasn't posted properly.

We received a Protest from you regarding Environmental Issues and it has been accepted. We have also received a Protest from T. James Fisher; J.W. Fisher Logging Company; and Phyllis Fisher based on Injury to Riparian Rights. However, the SWRCB has no record of your riparian claim. If you are claiming riparian rights, you (or your family or attorney) need to file a Statement of Riparian Use for us to recognize prior rights. Two letters have been sent to Jeffery J. Swanson regarding this matter; one on April 4, 2000 and one on August 2, 2000. The 8/2 letter states: "Please refer to the enclosed letter and map dated April 4, 2000. To date, we have not received your response. Your protest in its current form does not comply with the requirements of the California Code of Regulations, Title 23, section 745. If we do not receive the requested information within 30 days from the date of this letter, your protest will be rejected pursuant to Water Code section 749." That gives you until September 2, 2000.

Fill out a 'Statement of Diversion and Water Use Form' if your land (and the land the water is used on) is riparian to the stream and water is not stored for more than 30 days. These forms and information packets can also be found at the above mentioned website. Go to 'Water Rights Information', then 'Water Right Application forms'. Scroll down to 'Statement of Diversion and Water Use Forms'. Mr. Swanson should also have copies of these forms and the letters the SWRCB has sent him.
Rob Miller

CC: Yoko Mooring

From: Robert E. Miller
To: konradfisher@yahoo.com
Date: 8/28/00 2:49PM
Subject: Stanshaw report / streamflow

Mr. Fisher,

Attached is a copy of the Field Report (MS Word) and a graph of Stanshaw's estimated streamflow which was extrapolated from a gage on nearby Ti Creek (MS Excel). The graph only covers the early 60's b/c that is the only time the gage was in operation. Margaret Tauzer (NMFS) produced the streamflow graph. The map referred to in the Report is similar to the ones I handed out but I updated it and labeled where photos and temps were taken. Sorry that I do not have electronic versions of either the map or the photos. I can mail hard copies to you if you'd like. Note that these Field Reports are just that; a report of our field trip and what we got out of it. It's nothing near peer-reviewed quality nor does it make any formal recommendations. It's what we put in the record of the review process and a better way for us to an idea of the project since the description that is in the application is usually minimal.

Rob

WR-4
FILE
29449

ENVIRONMENTAL FIELD REPORT

Prepared by Robert E. Miller
SWRCB, Division of Water Rights (DWR)
Environmental Assessment Section (EAS)

RE/M REM 8-15-00

Application No.: 29449

Applicant: Doug, Heidi, Norman D., and Caroline Cole

Location: Siskiyou Co. at Marble Mountain Ranch, 7.5 miles north of the Siskiyou-Humboldt County border along State Highway 96 (Somes Bar USGS 7.5 Minute Quadrangle).

DWR Staff involved: Ross Swenerton, Robert E. Miller, and Yoko Mooring

Applicant / Agent present: Doug Cole (applicant), Owner of Marble Mountain Ranch

Others present:

National Marine Fisheries Service (NMFS): Margaret Tauzer, Chuck Glasgow, and Tim Broadman. – protest accepted.

California Department of Fish & Game (DFG): Jane Vorpagel and Dennis Maria. – protest accepted.

Karuk Tribe of California: Ron Reed and Todd Soto. – local party with an interest in salmonid issues.

Non agency: Konrad Fisher (protestant, environmental grounds), Dennis Hood (KDH Biological Resource Consultation, on behalf of the Fishers), Michael David Fellows (caretaker of Fisher Ranch), and Neil Tocher (downstream user of water diverted from Stanshaw Creek).

Date: 07/26/2000

PROJECT DESCRIPTION: Applicant seeks a right to directly divert 3 cubic feet per second (cfs) from Stanshaw Creek, tributary to Klamath River, thence Pacific Ocean, in Siskiyou County. Water is conveyed through 5,200 feet of earthen ditch and 455 feet of 16-inch diameter steel pipe (penstock). The penstock uses 200 feet of fall to turn a Pelton wheel turbine. The hydroelectric generator produces a maximum of 33.9 kilowatts of electricity at 80% turbine efficiency. After use (see note), the water is conveyed via ditch into Irving Creek, thence Klamath River. (Note: Some water is taken from the ditch before and after the hydroplant for use by the Cole's for domestic use and pasture irrigation, respectively. Irrigation and domestic use is not applied for by this application and may be covered by pre-1914 rights and a Small Domestic Use Permit. Neil Tocher takes water from the ditch before it enters Irving Creek for domestic use, pasture irrigation, power generation, and to maintain a recreational reservoir. Mr. Tocher's project will briefly be described in another report. Mr. Tocher does not have a valid riparian claim, nor has he applied for Appropriative or Small Domestic Use Permit.) The diversion ditch has been in place since the mid to late 1800's and the turbine and generator were installed circa 1940. Mr. Tocher's project is in place, but the exact date of each facet of his project is unknown at this time.

ENVIRONMENTAL SETTING:

Land use. The Place of Use (POU) is a hydroelectric generator (pelton wheel) producing 33.9 kilowatts of electricity (**photos 1, 3, 4**). This power is used on the premises of Marble Mountain Ranch, supplying power to 11 cabins, 2 rental homes, a lodge, the Cole residence, and recreational vehicle hookups. A diesel powered Caterpillar Electric Generator (75 kW) supplies backup and supplemental power, but its high operational cost (\$2,500-\$3,000/month) make it inhibitive to operate on a full-time capacity (**photo 2**).

Vegetation. The ranch is surrounded by North Coast Coniferous Forest. The riparian area surrounding both Stanshaw and Irving Creeks is lush and in good condition, supplying approximately 90% stream shading and large woody debris (LWD) to the channel (**photo 5, 6**). LWD is ideal for creating pools and offering cover for rearing salmonids.

Wildlife and fisheries. Stanshaw Creek contains steelhead (*Oncorhynchus mykiss*) and coho salmon (*O. kisutch*). The steelhead in this area are in the Klamath Mountains Province Evolutionary Significant Unit (ESU) and are candidate species under the federal Endangered Species Act (ESA); they are a species of concern to the DFG. Coho (Southern Oregon/Northern California Coasts ESU) are federally threatened. During this trip, both species were positively identified below the Highway 96 culvert by electrofishing by Dennis Maria and Jane Vorpapel (1 coho at age 0+; 8 juvenile steelhead) and viewed through dive masks by Ron Reed and Todd Soto (**photos 7-11**). I personally observed 3 coho (0+) and >3 juvenile steelhead while standing near the washout pool below the culvert. It is presumed that anadromous fishes are unable to negotiate through the culvert to get above Highway 96. Plans are underway by the Forest Service (USFS), DFG and the Department of Transportation (CalTrans) to correct this passage problem.

On July 7, 2000, Mr. Reed and Mr. Soto electrofished Stanshaw Creek from the mouth up to Hwy. 96. They sampled every pool that was at least 1 to 1.5 feet deep: 18 pools were sampled and coho were found in 16 of them. A total of 33 coho (age 0+) were observed.

Further upstream, just below the Point of Diversion (POD), Mr. Soto netted an age-0 *O. mykiss* (**photo 13**). It is presumed that this was a resident rainbow trout as steelhead cannot negotiate above the Hwy. 96 culvert. A Pacific giant salamander (*Dicamptodon tenebrosus*) was observed in the diversion channel at the POD (**photo 12**). Another *O. mykiss* (age 1+) was found dead near the diversion ditch about 200 yards before it enters the penstock leading to the generator (**photo 14**). It was probably killed by a predator (it was not stranded, water temp. is not an issue [12.2 °C], and it appeared in good condition).

Hydrology and water quality. The Stanshaw and Irving drainages receive approximately 55 inches of precipitation per year (WRIMS GIS and Rantz Isohyetal). Most, if not all, of this is in the form of rainfall. Margaret Tauzer (NMFS) estimated Stanshaw flow by obtaining Ti Creek stream flow data (USGS gauge) and multiplying it by the ratio of watershed area of Stanshaw Creek (at the confluence with the Klamath River) divided by the watershed area of Ti Creek (at the gage). Ti Creek is approximately 3 miles north of Stanshaw Creek. For the period of record (10/1/1960 – 9/30/1964), Ms. Tauzer calculated the average unimpaired stream flow as 8.12 cfs at the mouth with a minimum and maximum of 1.02 cfs and 100.1 cfs, respectively (**figure 1**). During the period of record, estimated unimpaired streamflow in Stanshaw Creek dips below 3 cfs, the amount applied for by this application, in late July and most of August, September, and October. Using the rational method and assuming an average rainfall of 55 inches, Ms. Tauzer calculated an average flow at the mouth of 7.33 cfs.

As mentioned earlier, there is a fish passage issue in Stanshaw Creek at the Hwy 96 crossing. The culverts are long (>50 yards) and on a steep slope (~5%) with a smooth concrete substrate that offers no resting areas for salmonids migrating upstream (see **photos 7, 8**).

The POD is approximately three-quarters of a mile above highway 96 (**photos 15, 16**). The diversion structure is maintained annually by replacing rocks in the stream channel. At the time of this trip, the "diversion rocks" were a migration barrier to fish moving both upstream and downstream as the only water entering Stanshaw was seeping under these "diversion rocks". The flow entering the diversion ditch appeared to be at least twice that of the flow remaining in Stanshaw. The applicant does have a 1600 Permit from DFG, but it is stated that the diversion should be constructed so as to allow for the passage of fish. The POD and a large portion of the ditch are on USFS property.

Moving down the diversion ditch, a relief line is situated to convey surplus water out of the ditch during high flows (**photos 17, 18, 19**). Only a minimal amount of water was passing through this line during this visit. Water passing through the relief line flows back in to Stanshaw Creek.

Down-diversion of the relief line, a half-culvert is buried in the ditch (**photo 20**). The applicant says he needs to keep the half-culvert full (the amount present during our review) to operate his hydropower generator effectively; less than that, and he is short on power, more than that, and most is passed through the relief line described above. This is a good place to measure / monitor flow in the ditch. The flow was estimated just upstream of this half-culvert by timing a float over a known distance and measuring the ditch cross section at this reach (**photo 21**). Flow was about 1 foot per second and cross sectional area was about 2 feet (flow \approx 2 cfs). The applicant claims, and it was evident, that a lot of water seeps out of the ditch between here and the POD.

Water is also gravel-filtered out of the ditch (**photo 22**) into a pipe that leads to water purification tanks to supply domestic uses (**photo 23**). This water is not applied for in this application (Small Domestic or Pre-14?).

The ditch continues (**photo 24**) until it enters the trash rack (**photo 25**), thence the holding tank to produce head, thence down the penstock to the hydroplant (see **photos 1,3,4**). Water is then redirected into another ditch which flows into Irving Creek. Mr. Tocher takes water out of the ditch before it enters Irving Creek (**photo 26, 27**).

Water temperature was measured in Stanshaw Creek below Hwy 96 (12.2 °C, 54 °F), Stanshaw Creek at the POD (12.0 °C, 53.6 °F), the diversion ditch before it enters the trash rack (12.2 °C, 54 °F), the diversion ditch just before entering Irving Creek (12.5 °C, 54.5 °F), and Irving Creek upstream of the diversion discharge (12.0 °C, 53.6 °F).

DISCUSSION:

After the field review, the participants discussed the project, its potential impacts to anadromous salmonids, further studies that are warranted or planned, project alternatives / mitigation strategies, and the next step in the permitting process. Below is a brief synopsis of our discussion.

All participants were in agreement, except Mr. Cole, that the project, in its current form, has potentially negative effects to anadromous salmonids. All of these effects are due to decreased flows in Stanshaw: less habitat may be available, potential increases in temperature, and potential passage problems exist at the mouth. Mr. Cole kept stressing that Stanshaw is not good habitat, and that improvements are being made to Irving Creek by supplementing the flow. NMFS, DFG, Dennis Reed, and Konrad Fisher maintained that habitat needs to be improved in Stanshaw Creek (i.e. benefits to Irving fishery/habitat does not outweigh nor equal detrimental effects to Stanshaw fishery/habitat). All protestants present want more water to be left in or redirected to Stanshaw

Hood?

Hood?

Creek after the hydroplant. Dennis Reed asked if the USFS, NMFS, and/or DFG could do a habitat suitability study to quantify any beneficial effects Stanshaw may receive if it were to receive more water. He and Mr. Fisher plan to ask for funding from the DFG California Coastal Restoration Plan (CCRP) to do such a study. They had plans to ask for funding from the CCRP to study and improve the Highway 96 culverts, but that may be delayed. NMFS, DFG, Dennis Reed, and Konrad Fisher emphasized that the culverts at Hwy 96 will be fixed to allow for fish passage in the near future.

POTENTIAL PROJECT IMPROVEMENTS DISCUSSED

1. Improve the diversion structure at the POD on Stanshaw Creek.

This may be accomplished by placing a more permanent structure in the stream channel such as a screened pipe/siphon or a small check dam with a slot that allows for bypass and fish passage. This may be difficult since the channel frequently receives high streamflow and debris and the channel is very dynamic.

2. Improve the delivery system to hydroplant.

If this is accomplished, less water would need to be diverted out of Stanshaw Creek. Lining the ditch or installing a pipeline were possible methods mentioned.

3. Improve the efficiency of the hydroplant.

This is another method that would require less water to be diverted. We discussed increasing the drop of the penstock, installing a smoother penstock, and installing a newer, more efficient generator.

4. Redirect water back to Stanshaw after it has passed through the Pelton wheel.

Water would be discharged back in to Stanshaw via pipeline just upstream of Hwy. 96. Some water would have to be left in the current ditch that leads to Irving Creek so that Mr. Cole can irrigate (Pre-14 claim of 0.5 cfs). This would still leave the reach between Hwy 96 and the POD at the current flow regime, which may be a problem if passage improvements are made and anadromous fishes get above Hwy 96.

5. Alternative energy sources.

Solar, diesel generator, propane, and running power lines from the town of Somes Bar (7 miles south) are all potential alternative energy sources.

Mr. Cole stressed that all of these options are costly and that he could not afford them. The alternative that most appealed to him was #4, although he would still need to get some funding for that alternative. Other parties thought #4 may be a viable solution, but a consensus needs to be reached as to how much water needs to be redirected. The study proposed by Mr. Reed or studies done by NMFS, DFG, and/or USFS may answer this question. Also, Mr. Reed, Mr. Fisher, Mr. Cole, and Mr. Maria were going to determine if funding was available from the CCRP to develop any of these possible improvements. Mr. Swenerton asked NMFS and DFG to develop alternatives to submit to the SWRCB that may improve the fishery and that are feasible for Mr. Cole so that their protests can be dismissed.

OTHER ISSUES

Mr. Jon Grunbaum, a fisheries biologist for the USFS, was invited to attend but was unable to make it. The POD and most of the ditch are on USFS property. It is unknown at this time whether a USFS Use Permit is needed by the applicant or if the project has been "grandfathered". If

a Use Permit is required, the NMFS may have a nexus for getting more involved in the project because a federal agency (USFS) is supporting a project that may have a negative effect on a federally listed species (coho salmon). The USFS would be required to produce a Biological Assessment and then NMFS would issue a Biological Opinion. Chuck Glasgow (NMFS) is going to discuss this with Mr. Grunbaum or other USFS representatives.

ATTACHMENTS: PHOTOS, MAP, FIGURE

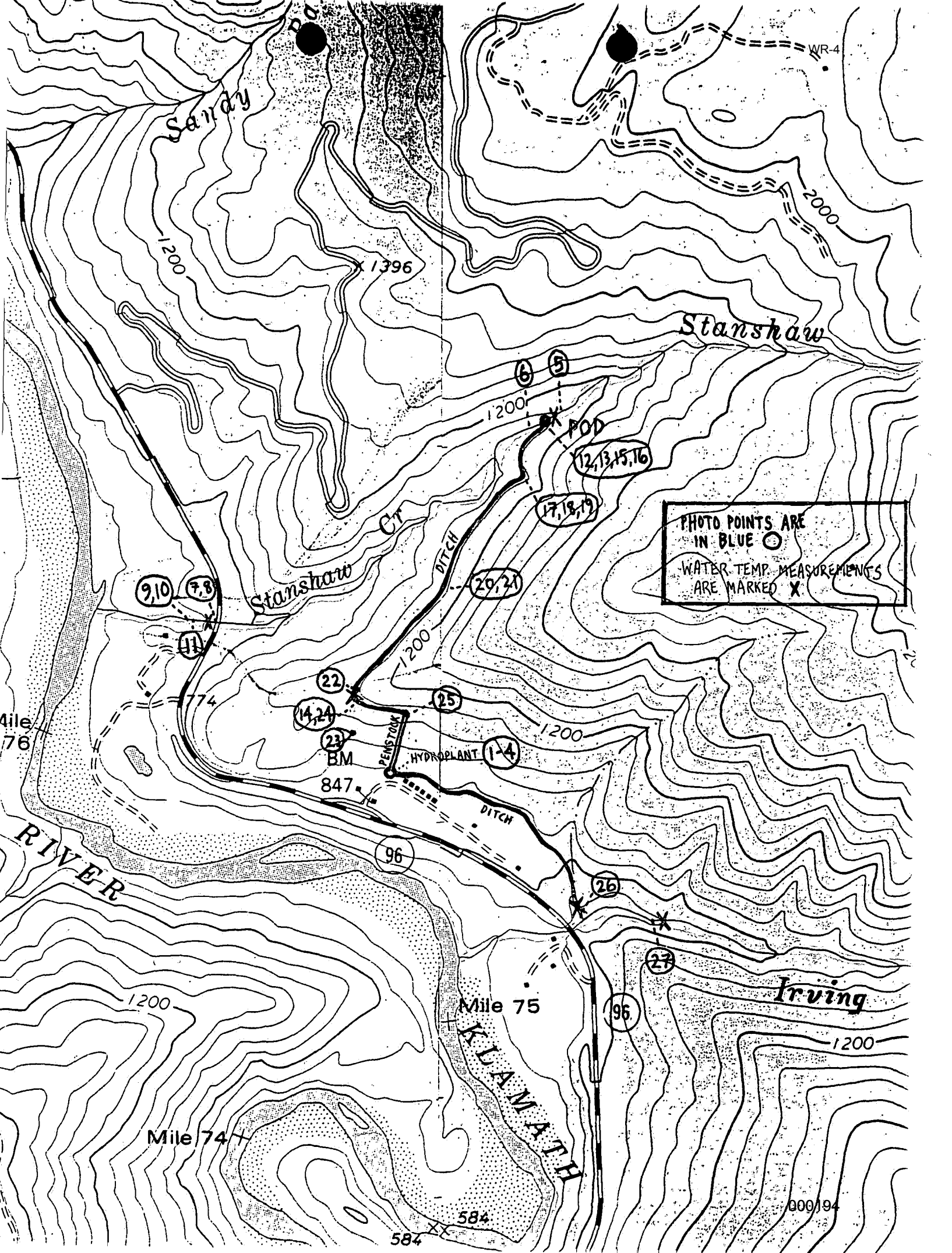


PHOTO POINTS ARE
IN BLUE ○
WATER TEMP MEASUREMENTS
ARE MARKED X

Sandy

Stanshaw

Stanshaw

Irving

Mile 75

Mile 74

Mile 76

KLAMATH

RIVER

POD

POD

BM

HYDROPLANT

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WR-4

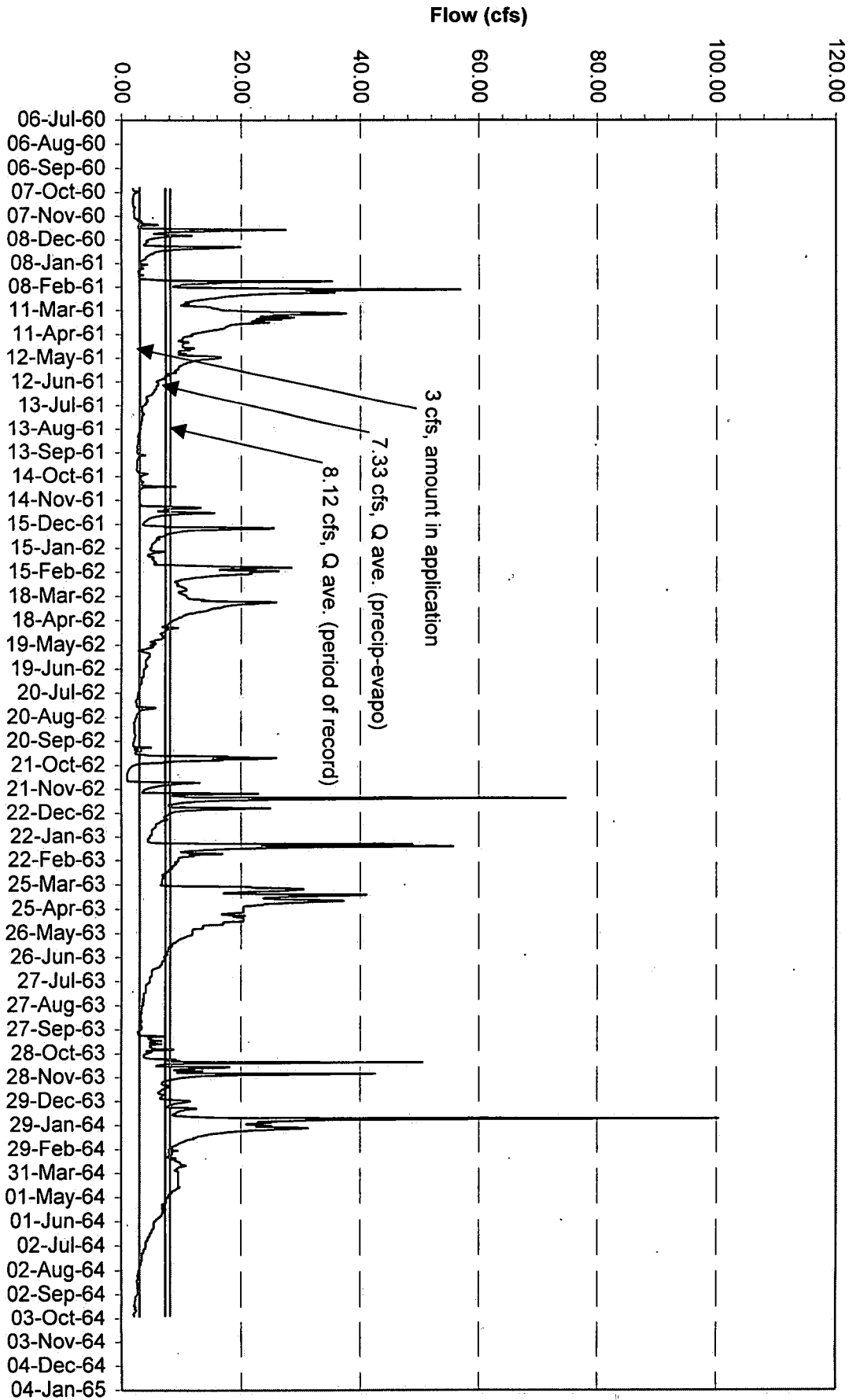


Figure 1. Stanshaw Creek Estimate of Daily Flows based on Ti Creek Gage

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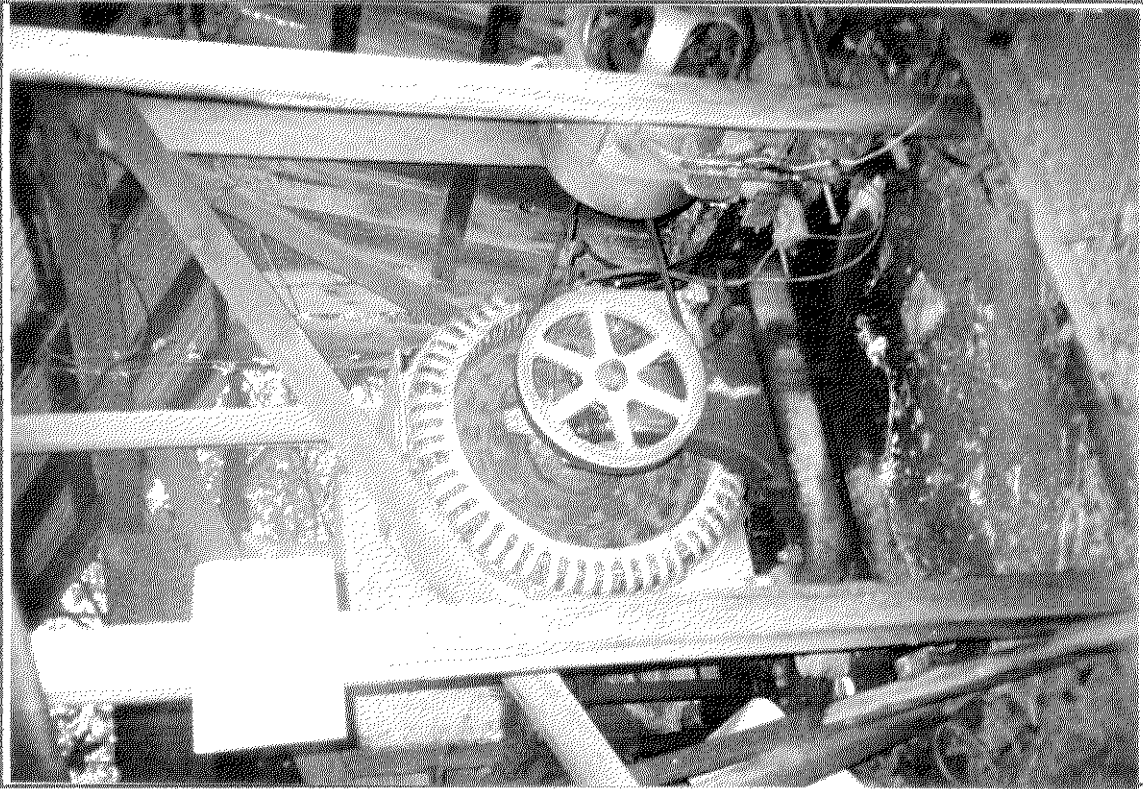


Photo 1. WWII era pelton wheel and hydroelectric generator.

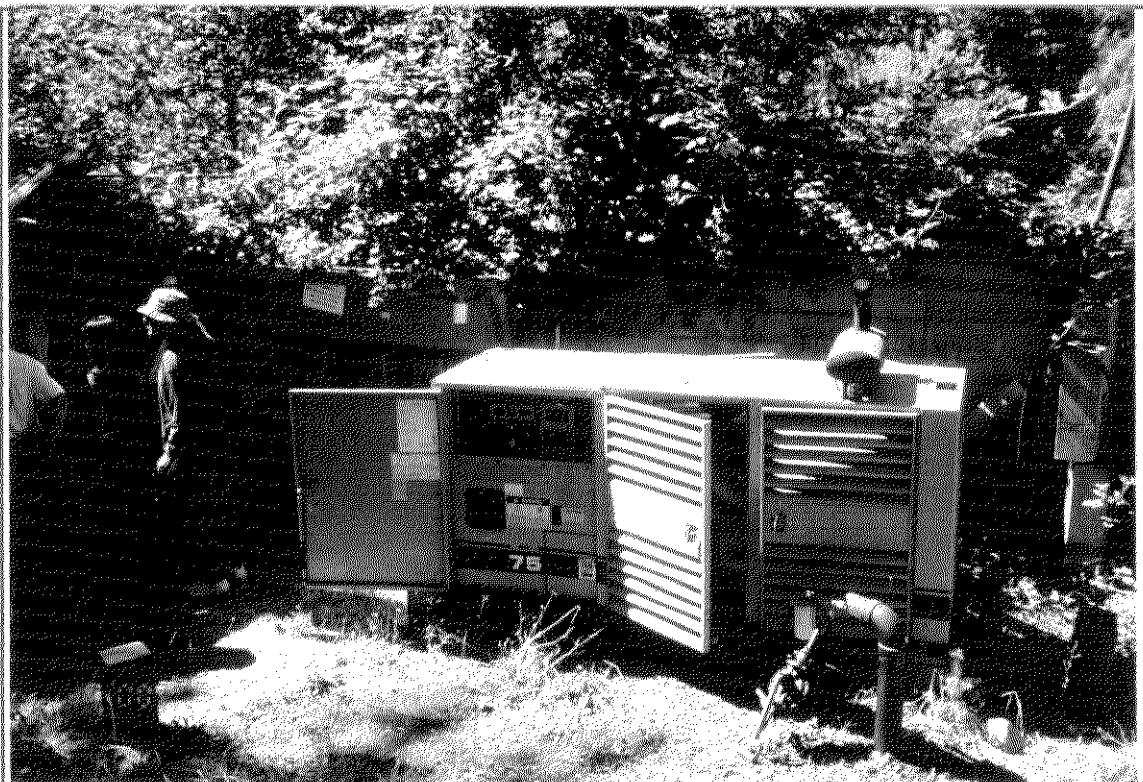


Photo 2. Diesel powered Caterpillar generator

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Photos 3 and 4 . Relief valve at hydrogenation facility. When water is not running through the pelton wheel, water is released through this pipe (left).

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Photos 5 and 6, Stanshaw Creek just above (left) and below the POD.

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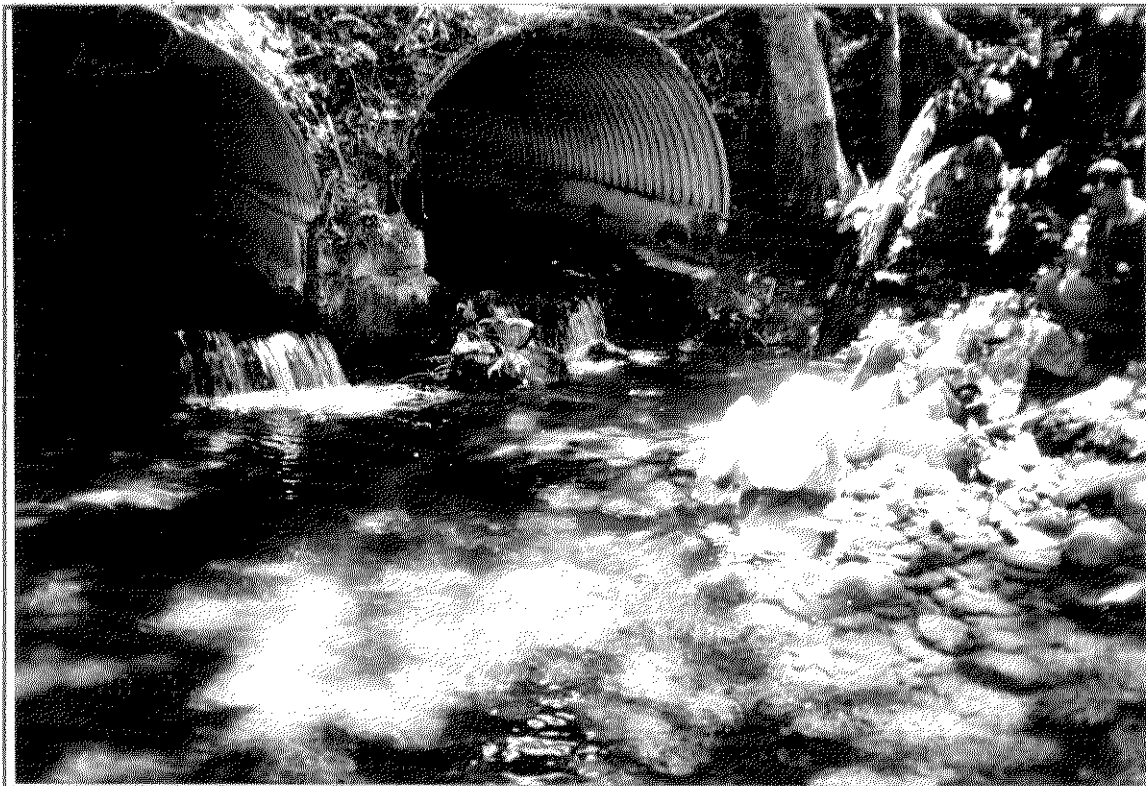


Photo 7. Todd Soto looking for salmonids through dive mask in pool just below Hwy. 96. Three coho and a few steelhead were visually observed.



Photo 8. Jane Vorpapel (left) and Dennis Maria (pointing) electrofishing in the same pool. Only steelhead were captured via electrofishing in this pool.

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Photo 9. DFG electrofishing (Todd Soto assisting) a pool in Stanshaw Creek about 100 yards downstream of Highway 96.

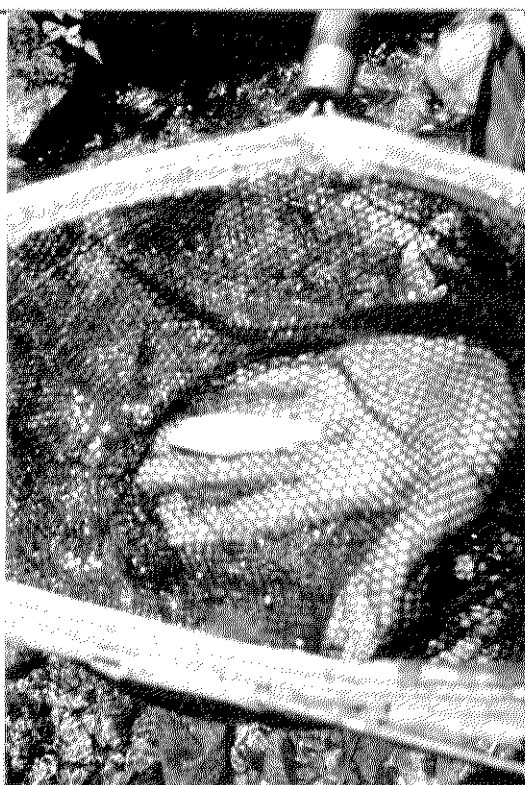
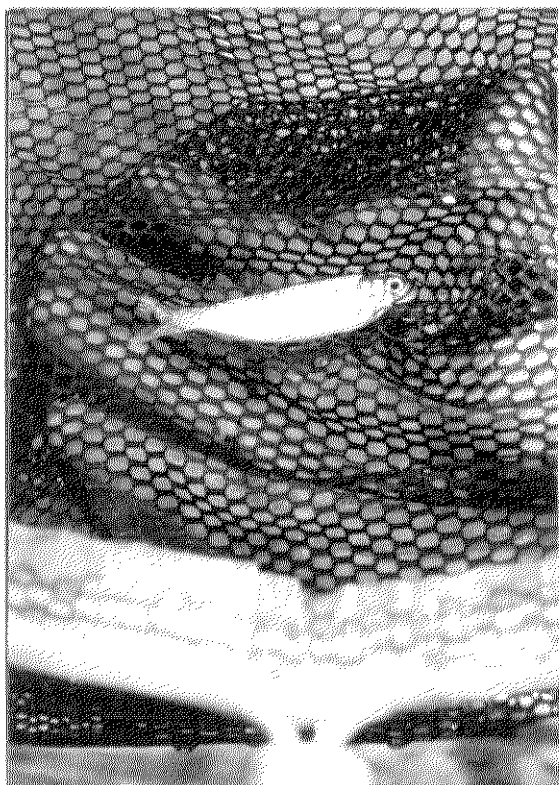


Photo 10 (left). An age 0+ coho salmon was electrofished out of the pool mentioned above.

Photo 11 (right). A one year-old *O. mykiss* (probably a steelhead) electrofished from a pool about 50 yards downstream of Highway 96.

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Photo 12. A Pacific giant salamander in the diversion ditch at the POD. It is facing to the right with its head submerged and its back half and tail visible.

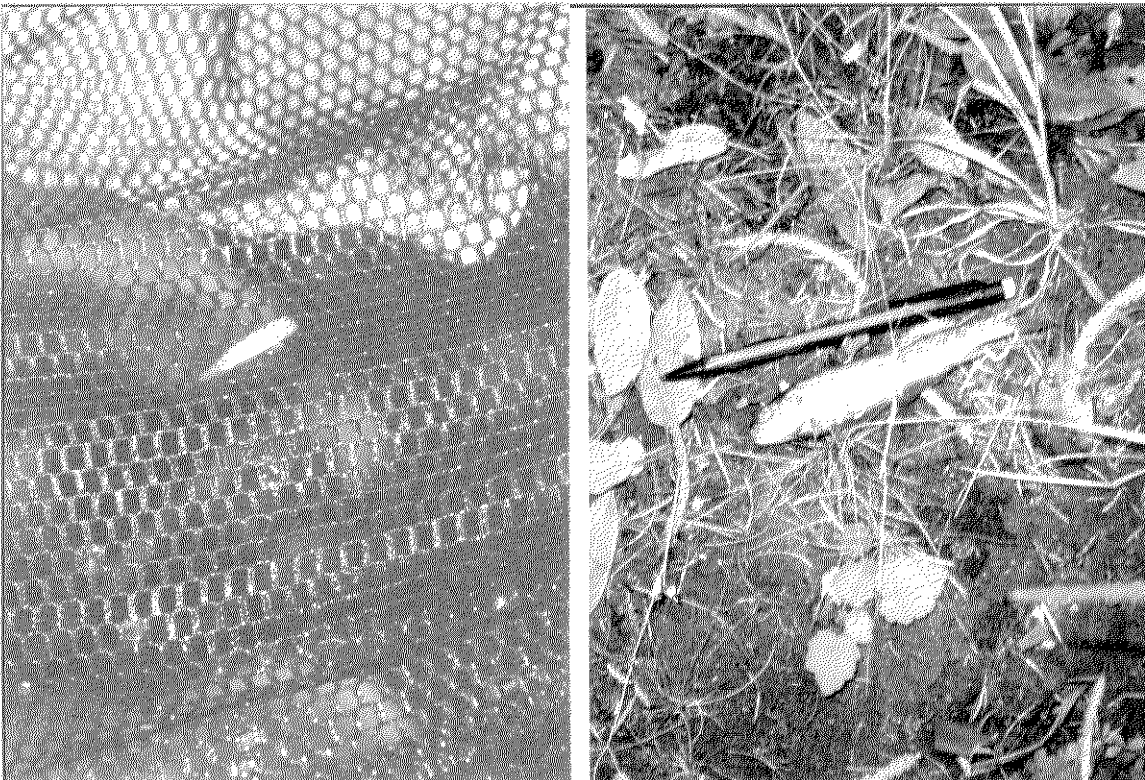


Photo 13 (left). An age-0 *O. mykiss* (probably a resident rainbow trout) netted from Stanshaw Creek immediately downstream of the POD.

Photo 14 (right). A 5-inch *O. mykiss* (probably a resident rainbow trout) found dead along the diversion ditch.

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Photo 15. The POD looking downstream. The diversion ditch is on the left. Note the “diversion rocks” in foreground.



Photo 16. The diversion ditch (top) and water seeping through the “diversion rocks”. The ditch and stream are flowing left to right.

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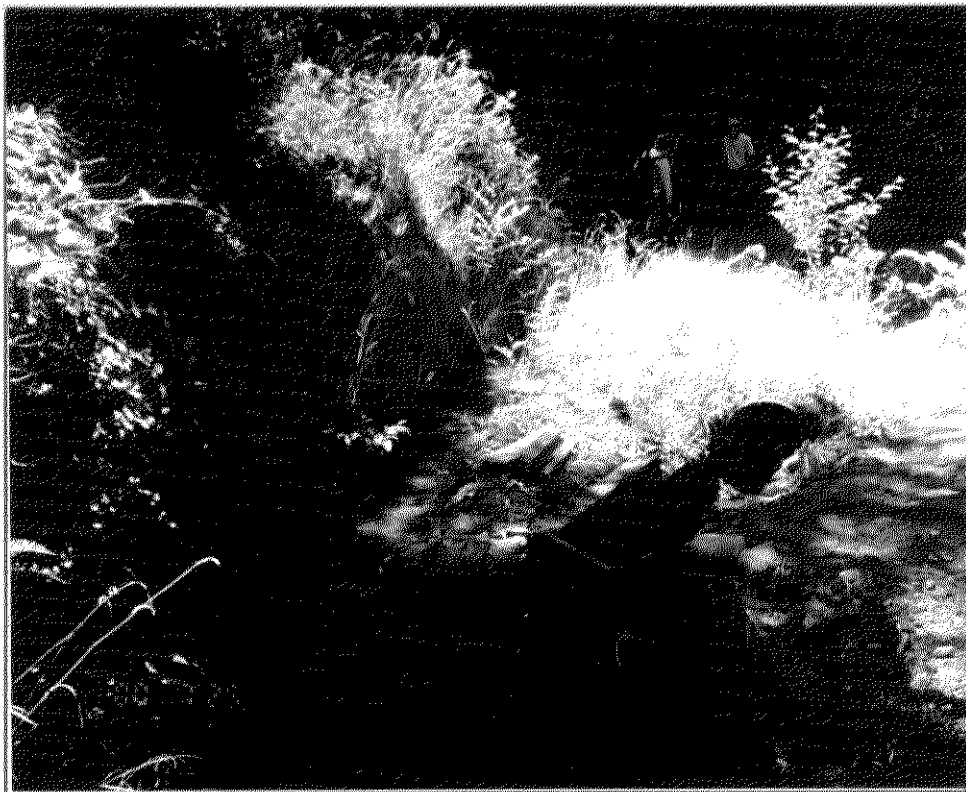


Photo 17. (left) Looking downstream at the relief structure.

Photos 18 and 19. The relief structure looking upstream (bottom left) and downstream at the relief outlet culvert.



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Photo 20. Half-culvert in ditch.



Photo 21. Location where rough stream-flow measurement was taken.

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Photo 22. Location of gravel filter in ditch which leads to water purification tanks.



Photo 23. Water purification tanks.

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Photo 24. Looking downstream at the ditch between the water filtration point and the trash rack / penstock. The dead trout in photo 14 was found near here.



Photo 25. Mr. Cole clearing the trash rack of leaf litter. Clearing is done daily and > 5 times per day during the fall. Water then enters a holding tank, thence penstock.

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Photo 26. The diversion ditch after water has been withdrawn by Mr. Toucher and just before it enters Irving Creek.



Photo 27. Irving Creek, about 200 yards upstream of the ditch discharge.

29449
WR-4
Yam

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

00 AUG 25 PM 2: 23

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

WR-4



Gray Davis
Governor

Winston H. Hickox
Secretary for
Environmental
Protection

Division of Water Rights
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FAX (916) 657-1485 • Web Site Address: <http://www.swrcb.ca.gov>
Division of Water Rights: <http://www.waterrights.ca.gov>

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



State Water Resources Control Board

SURNAME
WR-4



Gray Davis
Governor

Winston H. Hickox
Secretary for
Environmental
Protection

Division of Water Rights
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In Reply Refer
to:331:YM:29449

AUG 02 2000

T. James Fisher, et al.
c/o Jeffery J. Swanson
2515 Park Marina Drive, Suite 102
Redding, CA 96001

Dear Mr. Swanson:

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

Please refer to the enclosed letter and map dated April 4, 2000. To date, we have not received your response. Your protest in its current form does not comply with the requirements of the California Code of Regulations, title 23, section 745. If we do not receive the requested information within 30 days from the date of this letter, your protest will be rejected pursuant to Water Code section 749.

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

Sincerely,

ORIGINAL SIGNED BY:

Harry Schueller, Chief
Division of Water Rights

Enclosures

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Johns / 7/28/2000

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Winston H. Hickox
Secretary for
Environmental
Protection

State Water Resources Control Board

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WR-4



Gray Davis
Governor

MEMORANDUM

TO: File A029449

FROM: Robert E. Miller
DIVISION OF WATER RIGHTS

DATE: 07/19/00

SUBJECT: FERC Involvement

REM REEM 7/19/00

I spoke with Russ Kanz (SWRCB) about FERC's potential involvement in this project since the POD and the majority of the ditch/flume are on federal property (US Forest Service, Klamath National Forest). FERC does have jurisdiction when a hydropower project is on "federal reservation" but usually leaves the environmental review process up to State and local agencies for small hydroprojects. FERC believes that the CEQA process, as it pertains to water appropriation applications, is adequate and will suitably be handled by DFG and SWRCB. If an agreement cannot be reached by interested parties, it is possible, and potentially more expensive to the applicant, to turn the project back over to the jurisdiction of FERC.



State Water Resources Control Board

29449
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Winston H. Hickox
Secretary for
Environmental
Protection

Division of Water Rights
901 P Street • Sacramento, California 95814 • (916) 657-0765
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 657-1485 • Web Site Address: <http://www.swrcb.ca.gov>
Division of Water Rights: <http://www.waterrights.ca.gov>

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

YMOORING:7/11/00:pminer:7-24-00
u:\ym\29449 CSPA

Control D-00-046

SURNAME

jm 7/24/00	CCA 7-24-00	DWD 7/27	000216 SMW
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Winston H. Hickox
Secretary for
Environmental
Protection

State Water Resources Control Board

901 P Street • Sacramento, California 95814 • (916) 657-2170
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 657-1485 • Web Site Address: <http://www.waterrights.ca.gov>

WR-4



Gray Davis
Governor

MEMORANDUM

TO: File A029449

FROM: Robert E. Miller
DIVISION OF WATER RIGHTS

REM REEM 7/19/00

DATE: 07/19/00

SUBJECT: FERC Involvement

I spoke with Russ Kanz (SWRCB) about FERC's potential involvement in this project since the POD and the majority of the ditch/flume are on federal property (US Forest Service, Klamath National Forest). FERC does have jurisdiction when a hydropower project is on "federal reservation" but usually leaves the environmental review process up to State and local agencies for small hydroprojects. FERC believes that the CEQA process, as it pertains to water appropriation applications, is adequate and will suitably be handled by DFG and SWRCB. If an agreement cannot be reached by interested parties, it is possible, and potentially more expensive to the applicant, to turn the project back over to the jurisdiction of FERC.

DIVISION WATER RIGHTS -- ENVIRONMENTAL SECTION
CULTURAL RESOURCES EVALUATION CHECKLIST

WR-4

APPLICATION: 29449 QUAD MAP NAME: Somes Bar/Bark Shanty Gulch
PETITION NO. _____ to change PERMIT _____ LICENSE _____

I. BACKGROUND INFORMATION:

A. Lead Agency: SWRCB County Other: _____

B. Land Ownership Status:

POD Private Public: State or Federal Agency U.S. Forest Service Other: _____

POU Private Public: State or Federal Agency _____ Other: _____

C. Status of Completion of Environmental Document for Project by Lead Agency:

Complete (Type: _____) In progress Not started

D. Degree of Proposed Disturbance to Previously Undisturbed Soil:

- None; project complete, no further construction planned
- Pipelines involving no subsurface trenching
- Spring development including spring boxes, catchment basins, and/or pumps
- Proposed irrigation of lands that involve no additional ground disturbance (e.g., conversion of dry-land farming to irrigation)
- Direct diversions involving: (circle appropriate items) offset wells, sumps, small diversion ponds, or other: _____
- New cultivation or construction on land previously disturbed by agriculture, land scraping, leveling, prior construction, trenching, paving or grading
- Construction, cultivation, or trenching of previously untilled or undisturbed land
- Unconstructed reservoirs
- Other: _____

E. Applicant: Doug Cole, Heidi Cole, Norman D. Cole, & Caroline Cole

Address: 92520 Highway 96

Somes Bar, CA 95568

Phone Number: (916)469-3322 County: Siskiyou

F. Parts A-E above prepared by:

Robert E. Miller 11-July-00
Signature Date

II. ARCHEOLOGICAL RECORDS SEARCH:

A. Archeological Records Search Conducted by: _____ on (date) _____

B. Findings:

- No recorded sites within the project boundaries
- ___ site(s) within 1/4 mile, ___ site(s) within 1/2 mile, ___ site(s) within 1 mile, ___ site(s) within 2 miles, from the project area

C. Field Survey Recommendation:

- Field survey not recommended since potential for significant impact appears low
- Field survey recommended: SWRCB responsible Applicant responsible
- Letter sent to applicant requiring survey by no later than: _____

III. FIELD SURVEY RESULTS (IF SURVEY REQUIRED):

- A. Negative Positive
- B. Permit term(s) necessary? No Yes (See attached explanation)

needs an arch survey

IV. FINAL CLEARANCE GIVEN BY:

Signature Date

File
WR-4
29449

PRELIMINARY ENVIRONMENTAL REVIEW CHECKLIST

APPLICATION NO: 29449 PERMIT NO: _____ LICENSE NO: _____

APPLICANT OR PETITIONER NAME: Doug Cole, Heidi Cole, Norman D. Cole, Caroline Cole

1) **PROJECT DESCRIPTION:** Applicant seeks to directly divert 3 cfs from Stanshaw Creek, tributary to Klamath River, thence Pacific Ocean, in Siskiyou County. Water is conveyed 5,200 feet via earthen channel, thence into 455 feet of 16-inch diameter steel pipe (penstock) to hydroelectric power generator. The penstock uses 200 feet of fall, which generates a maximum of 33.9 kilowatts of electricity at 80% turbine efficiency. After use, the water is conveyed via ditch into Irving Creek, thence Klamath River.

2) **PROJECT FEATURES:**

- (a) Onstream storage reservoir capacity: _____ AF
- (b) Diversion to offstream storage: Rate _____ cfs
Reservoir capacity _____ AF
- (c) Direct Diversion Rate 3.0 cfs / hydropower
_____ gpd / domestic
- (d) Season of diversion: January 1 – December 31
- (e) Project size: _____ Major Minor
- (f) Total annual use: 2,168.1 AF
- (g) Use(s) of water: Hydropower
- (h) Construction status of reservoir and/or diversion facilities:
 Not Started In Progress Completed (Date: turbine:1940, diversion ditch: late 1800's)
- (i) Development of Place of Use:
 Not Started In Progress Completed (Type: Turbine)

3) **WATER SOURCE STREAM FLOW:**

Perennial Intermittent Ephemeral Spring Lake Other: _____

4) **WRIMS STREAM CODE NUMBER:** 101904000

5) **LEAD AGENCY:** SWRCB County Other: _____

6) **POTENTIAL ENVIRONMENTAL IMPACTS:**

	Yes	Maybe	No
(a) Effects on fish and/or riparian habitat?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(b) Effects on terrestrial wildlife habitat?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(c) Rare, threatened or endangered animals?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(d) Rare, threatened or endangered plants?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(e) Areas of Special Biological Importance?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(f) Designated California Natural Areas?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(g) Cumulative impacts on resources not covered above?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(h) Fish flow bypass terms or other environmental terms required in project vicinity?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(i) Concerns raised by other agencies?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(j) Previous archeological records check or survey?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Preliminary Environmental Review Checklist

- (k) Archeological survey required?
- (l) Other potential impacts not covered above?

****Please See Attached Sheets for Explanation of Answers****

7) RECOMMENDATION:

(A) If SWRCB is Lead Agency:

- Preliminary Finding of Minor Project Exemption
- An Initial Study should be prepared with a ND or EIR
- An EIR should be prepared
- Other:

(B) If SWRCB is a Responsible Agency:

- If the Lead Agency prepares a ND or EIR, SWRCB should prepare a Staff Review Summary and a Notice of Determination should be filed upon SWRCB approval of the project.
- If the Lead Agency exempts the project, SWRCB issuance of a Notice of Exemption may be acceptable.
- Other:

The above Environmental Checklist was completed by:

PA GMA
Signature

7/11/00
Date

ENVIRONMENTAL SPECIALIST I
Title

Reviewed by: Ron Avencio
Supervisor

7/13/00
Date

**PRELIMINARY ENVIRONMENTAL REVIEW CHECKLIST
EXPLANATION FOR FINDINGS**

APPLICATION NO.: 29449 PERMIT NO.: _____ LICENSE NO.: _____

(6a) Effects on fish and/or riparian habitat:

Year-round diversion of 3 cfs may be detrimental to fishes inhabiting Stanshaw Creek, especially during the warm, dry summer months. Lower flows may cause passage problems, decrease water quality and limit available habitat and forage. Fish screening devices have not been installed at the POD, nor are any proposed to be installed. Anadromous fishes do not reach the POD, but CalTrans and the USFS have a proposal to correct the fish passage barrier downstream of the POD at Highway 96. Steelhead (*Oncorhynchus mykiss irideus*) are present in Stanshaw Creek below this highway and chinook salmon (*O. tshawytscha*) and coho salmon (*Oncorhynchus kisutch*) may be present. Brook trout (*Salvelinus fontinalis*) and resident rainbow (*O. mykiss*) are present near the POD, and it has been reported that some species of trout are found in the water conveyance system. After use at the hydropower facility, water is discharged into Irving Creek. This increase in water supply may be beneficial to Irving Creek's aquatic and riparian species, unless the discharge is significantly warmer and alters the temperature regime of Irving Creek. If so, salmonids and herptiles may be negatively affected in Irving Creek from the discharge point down to the mouth of Irving Creek at Klamath River.

Department of Water Resources Memo Report 1/73 "Runoff Depth-Duration Frequency in Selected California Watersheds" shows that Stanshaw Creek's average flow at Cole's (previously Young's) Ranch Diversion is 3.7, 1.85, 1.85, 1.85, 3.7 cfs for July, August, September, October, November, respectively*. The applicant has applied for year-round diversion of 3 cfs which may not be attainable, or if all available water is diverted, will dewater Stanshaw Creek.

* See attached sheet

(6b) Effects on terrestrial wildlife habitat:

A narrow corridor of forest about 1 mile long (~5,200 feet) was converted into riparian and stream habitat by the construction of the conveyance channel. The channel was constructed in the late 1800's and the place of use, a turbine, was installed circa 1940. The small area of disturbance and potential tree removal at a time when forests were relatively undisturbed should not have, nor continues to, significantly affect terrestrial wildlife habitat. No new terrestrial habitat modifications are proposed by this project.

(6c) Rare, threatened or endangered animals:

A query of *RareFind 2* (1997) was executed for Somes Bar and Bark Shanty Gulch Quadrangles. Both quads were selected because the project area overlaps each quad. Information on federal special status fishes was obtained from the National Marine Fisheries Service (NMFS) website on endangered Pacific salmonids (<http://www.nwr.noaa.gov/1salmon/salmesa/index.htm>).

Del Norte Salamander (*Plethodon elongatus*)

Federal: Species of Concern State: None DFG: SC

Habitat: Associated with cool, moist microclimate of old growth forests. This NDDB occurrence was in Irving Creek upstream of the discharge point.

Project effects: May be affected by diversion from Stanshaw Creek and potentially warmer water in Irving

Creek. Diversion works may provide habitat.

Tailed frog (*Ascaphus truei*)

Federal: Species of Concern State: None DFG: SC

Habitat: Restricted to perennial montane streams of hardwood-conifer, redwood, Douglas-fir, & ponderosa pine habitats. Tadpoles require water below 15 °C.

Project effects: May be affected by diversion from Stanshaw Creek and potentially warmer water in Irving Creek.

Great blue heron (*Ardea herodias*) – rookery

Federal: None State: None DFG:

Habitat: Colonial nester in tall trees, cliffsides, and sequestered spots on marshes.

Project effects: Rookery is along mainstem Klamath River and should not be affected by this project.

Osprey (*Pandion haliaetus*) - nesting

Federal: None State: None DFG: SC

Habitat: Large nests built in treetops within 15 miles of good fish-producing bodies of water.

Project effects: No further terrestrial habitat modifications proposed, so nest sites should not be affected.

Northern goshawk (*Accipiter gentilis*) - nesting

Federal: Species of Concern State: None DFG: SC

Habitat: Nests on north slopes of coniferous forests near water.

Project effects: No further terrestrial habitat modifications proposed, so nest sites should not be affected.

Northern spotted owl (*Strix occidentalis caurina*)

Federal: Threatened State: None DFG: SC

Habitat: High, multistory canopies of old-growth forests.

Project effects: No further terrestrial habitat modifications proposed, so the project should not be affect this species.

Chinook salmon (*Oncorhynchus tshawytscha*) – Upper Klamath-Trinity Rivers ESU

Federal: Not warranted State: DFG:

Range: Klamath and Trinity River Basins upstream of the confluence of the Klamath and Trinity Rivers.

Project effects: May be present in Stanshaw and Irving; Lower flows in Stanshaw Creek and potentially warmer flows in Irving Creek may negatively affect this species. Could also have downstream (Klamath River) effects. Project is in place, so current status will not be affected, but recovery of the species may be affected.

Steelhead trout (*Oncorhynchus mykiss irideus*) – Klamath Mountains Province ESU

Federal: Candidate State: None DFG: SC

Range: The Elk River in Oregon to the Klamath and Trinity Rivers in California, inclusive.

Project effects: Lower flows in Stanshaw Creek and potentially warmer flows in Irving Creek may negatively affect this species. Definitely are present in lower reach of Stanshaw Creek, but are currently unable to traverse Hwy. 96 box culvert to reach POD. If corrections are made, screens may need to be installed at POD. Could also have downstream (Klamath River) effects. Project is in place, so current status will not be affected, but recovery of the species may be affected.

Coho salmon (*Oncorhynchus kisutch*) – Southern Oregon/Northern California Coasts ESU

Federal: Threatened State: DFG:

Range: Critical habitat is designated to include all river reaches accessible to listed coho salmon between Cape

Blanco and Punta Gorda.

Project effects: May be present in Stanshaw and Irving; Lower flows in Stanshaw Creek and potentially warmer flows in Irving Creek may negatively affect this species. Could also have downstream (Klamath River) effects. Project is in place, so current status will not be affected, but recovery of the species may be affected.

Klamath River Lamprey (*Lampetra similis*)

Federal: State: DFG: SC

Habitat: Adults inhabit large rivers, impoundments, and lakes. Ammocoetes may be found in smaller tributaries. Adults parasitic.

Project effects: May be present in the Klamath River near the project and in Stanshaw and Irving Creeks. Could be negatively affected.

Bigeye marbled sculpin (*Cottus klamathensis macrops*)

Federal: State: DFG: SC

Habitat: Soft-bottomed runs of clear, cold creeks and small to medium sized rivers.

Project effects: May be present in the Klamath River near the project and in Stanshaw and Irving Creeks. Could be negatively affected.

Pacific fisher (*Martes pennanti pacifica*)

Federal: Threatened State: None DFG: SC

Habitat: Cavities, snags, logs, and rocky areas of coniferous forests and deciduous-riparian area with high percent canopy closure.

Project effects: No further terrestrial habitat modifications proposed and riparian habitat probably not affected by reduced flows, so the species should not be affected.

Klamath/North Coast rainbow trout stream

Federal: None State: None DFG:

Habitat: Not applicable

Project effects: If present, lower flows and possible entrainment may negatively affect Stanshaw Creek rainbow trout population. Potentially warmer discharge into Irving Creek may also have negative effects.

Karok hesperian [=Karok indian snail] (*Vespericola karokorum*)

Federal: Species of Concern State: None DFG:

Habitat: Primarily under riparian vegetation, which provides shading from sunlight and a moist substrate

Project effects: Any loss of riparian vegetation along Stanshaw Creek may have been replaced by additional riparian vegetation along diversion ditch and by extra discharge into Irving Creek.

(6d) Rare, threatened or endangered plants: (include State status for each species)

A query of RareFind 2 and the California Native Plant Society's (CNPS) Electronic Inventory of Rare and Endangered Vascular Plants of California for Somes Bar and Bark Shanty Gulch Quadrangles revealed the following plant species:

--Project is at an elevation of 800-1200 feet (~ 245-365 meters)

Hall's sedge (*Carex halliana*)

Federal: None State: None CNPS: 2 Blooming period: May-Sept

Habitat: Meadows, pinyon and juniper woodland, subalpine coniferous forest

Elevation: 1370-2105 meters

Project effects: Project area is probably outside the elevational range of this species.

Meadow sedge (*Carex praticola*)

Federal: None State: None CNPS: 2 Blooming period: May-July

Habitat: Meadows (mesic)

Elevation: 0-3200 meters

Project effects: No meadows are in project area.

Oregon fireweed (*Epilobium oreganum*)

Federal: SOC State: None CNPS: 1B Blooming period: June-Aug

Habitat: Lower montane coniferous forest (mesic)

Elevation: 500-2240 meters

Project effects: Project area is probably outside the elevational range of this species.

Dudley's rush (*Juncus dudleyi*)

Federal: None State: None CNPS: 2 Blooming period: July-Aug

Habitat: Lower montane coniferous forest (mesic)

Elevation: 455-2000 meters

Project effects: Project area is probably outside the elevational range of this species.

Howell's lewisia (*Lewisia cotyledon* var. *howelli*)

Federal: SOC State: None CNPS: 3 Blooming period: April-July

Habitat: Lower montane coniferous forest (mesic)

Elevation: 150-2010 meters

Project effects: May be found at project area, but no new construction is planned.

Coast Range lomatium (*Lomatium martindalei*)

Federal: None State: None CNPS: 2 Blooming period: May-June

Habitat: Coastal bluff scrub, lower montane coniferous forest, meadows.

Elevation: 240-3000 meters

Project effects: May be found at project area, but no new construction is planned.

Marble Mountain campion (*Silene marmorensis*)

Federal: None State: None CNPS: 1B Blooming period: June

Habitat: Coastal bluff scrub, lower montane coniferous forest, meadows.

Elevation: 240-3000 meters

Project effects: May be found at project area, but no new construction is planned.

Robust false lupine (*Thermopsis robusta*)

Federal: None State: None CNPS: 1B Blooming period: May-July

Habitat: Broadleafed upland forest, North Coast coniferous forest.

Elevation: 150-1500 meters

Project effects: May be found at project area, but no new construction is planned.

(6e) Areas of Special Biological Significance:

There is one Area of Special Biological Importance (ASBI) in the vicinity of the project: Siskiyou County ASBI 40. It is a heron rookery at the confluence of Rogers Creek and Klamath River about 2 miles downstream of the project. The following is copied from the ASBI map:

"Herons usually nest colonially in marsh or riparian habitats. Nests are typically stick platforms in trees, willow thickets, reeds, or cattails. Because of the concentration of birds in a

small area, disturbance could adversely impact many breeding pairs.”

This project has been in place for approximately 60 years, no new construction is planned, and it is not in the immediate vicinity of the rookery, so this project should not adversely affect ASBI 40.

(6f) Designated California Natural Areas:

The project is in Humboldt County Natural Area 2. This area covers 1,824,136 acres throughout Humboldt County and a significant portion in southwestern Siskiyou County. One hundred twenty-two (122) elements are listed in this area (Any potential elements should have been listed by the above mentioned *RareFind 2* and/or CNPS searches). The project should not have an impact to this Natural Area.

(6g) Cumulative impacts not covered above:

There is one other appropriation in the Stanshaw Creek drainage: Application 25446 (Permit 20955) has 2 PODs on 2 Unnamed Streams tributary to Stanshaw Creek (one other POD on Unnamed Stream tributary to Sandy Bar Creek). A total of 60 acre-feet per annum is diverted at these three PODs (project was exempted) and both of the Stanshaw PODs are upstream of this project.

There are no other cumulative impacts not discussed elsewhere.

(6h) Fish flow bypass terms or other environmental terms required in the project vicinity:

NMFS has stated via protest that the SWRCB use of the 60% unimpaired bypass term applied in other watersheds is insufficient for this application. May need to use “February median” flow bypass term.

(6i) Concerns raised by other responsible agencies:

DFG and NMFS have protested with concerns regarding steelhead and coho salmon, respectively.

(6j) Previous archeological records check or survey: No

(6k) Archeological survey: Survey required

8. Estimated Flow Characteristics of Stanshaw Creek (All estimates in cfs)

a. Average:

1) Stanshaw Creek (Annual: 12.9 cfs)

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
30	20	15	23	26	10	4	2	2	2	4	20

2) Mountain Home Ranch Drainage (Annual: 1.0 cfs)

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
2.4	1.6	1.2	1.8	2.1	0.8	0.3	.15	.15	.15	0.3	1.6

3) Net-flow at Young's Ranch Diversion, Stanshaw Creek (Annual: 11.9 cfs)

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
27.6	18.4	13.8	21.2	23.9	9.2	3.7	1.85	1.85	1.85	3.7	18.4

b. Low-flow: (Probability: 1 in 50 yrs. using the 1976-77 drought as a model)

1) Stanshaw Creek

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
1.2	2.0	1.2	5.8	9.0	10.0	4.0	1.7	1.0	1.3	1.0	1.2

2) Mountain Home Ranch Drainage

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
0.10	0.15	0.10	0.50	0.70	0.80	0.30	0.13	-0.1	0.10	-0.1	0.10

3) Net-flow at Young's Ranch Diversion, Stanshaw Creek

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
1.1	1.8	1.1	5.3	8.3	9.2	3.7	1.6	0.9	1.2	0.9	1.1

c. Instantaneous Peak Flow of Stanshaw Creek for given Return Period:

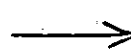
Annual	5-Year	10-Year	25-Year	50-Year	100-Year
225	350	550	800	1000	1250

Source: "Runoff Depth-Duration Frequency in Selected California Watersheds", DWR Memo Report 1/73.

9. Incremental Increases or Decreases in Flow along Stanshaw Creek:

It is highly unlikely that the flow in Stanshaw Creek Varies between the outlet of the Mountain Home subwatershed and the diversion for Young's Ranch, since the diversion is immediately downstream from the tributary's outlet. There are no other diversions in this short reach and the surface water and geologic characteristics are homogenous. Any effect from groundwater characteristics would merely add to the overall flow.

EAS
29449





COUNTY OF SISKIYOU

Planning Department

P.O. BOX 1085 • YREKA, CALIFORNIA 96097
(530) 842-8200 • FAX (530) 842-8211

RICHARD D. BARNUM
PLANNING DIRECTOR

*faxed 6/8 ROB MF
received 3:43pm 7/6/00
WB 9449 FILE*

July 5, 2000

Mr. Mike Faulkenstein
State Water Resources Control Board
Division of Water Rights
Post Office Box 2000
Sacramento, CA 95812-2000

Dear Mr. Faulkenstein:

Subject: Additional Comments to Doug Cole Hydroelectric Plant

This letter is to supplement my letter of February 15, 2000. I have since spoken with Rob Miller of your office. Mr. Miller informed me that while the source of diversion for the hydroelectric plant is on public land (Klamath National Forest), but the generator itself is on property owned by Mr. Cole.

As stated in my previous letter, power generation facilities are not a permitted use in this location; however, Mr. Miller advises that the facility was installed in 1940. At the time the facility was installed, the Zoning Ordinance was not yet adopted. The use is, therefore, considered to be legal, non-conforming ("Grandfathered"). So long as the Cole proposal does not involve the relocation or expansion of the facility, there would be no conflicts with General Plan policy or zoning.

Thank you for the opportunity to participate in the review process.

Sincerely,

Siskiyou County Planning Department
Richard D. Barnum, Planning Director

Wayne Virag
Assistant Planning Director

WV:jk

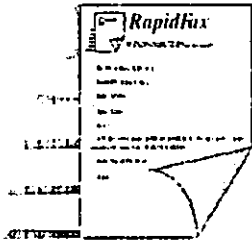
530 836 2062

Jerry Johns, Division of Water Rights (530) 836-2062
Bob Baiocchi, Consultant, Bob Baiocchi Consulting (530) 836-1115

6/29/00 1:14 PM

Application 29449 - Stanshaw Creek - K

File Copy 29449
WR-4



RapidFax

*This Fax was sent using FAXcilitate
The Premier Fax Software for the Apple Macintosh™*

To: Asst. Chief Jerry Johns, - Division of Water Rights

From: Bob Baiocchi, Consultant, Bob Baiocchi Consulting

Fax Phone Number: (530) 836-2062

Date: Thu, Jun 29, 2000 · 1:14 PM

Transmitting (3) pages, including cover sheet.

If there is difficulty with this transmission, please call: (530) 836-1115

Note:

Mr. Johns....Please provide a copy of this letter to Mr. Herrera.....Thank you...I look forward to your decision.....Bob Baiocchi, Consultant, CSI

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
P.O. BOX 1790
GRAEAGLE, CA 96103

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

June 29, 2000

Re: In the Matter of Water Right Application 29449;
Applicant, Mr. Cole, Stanshaw Creek tributary to Klamath
River; Proposed Hydropower Project; Request for Late Protest,
Standing, and Other Related Information by California
Sportfishing Protection Alliance

By Fax Communication From 530-836-2062 to 916-657-1485

Dear Mr. Johns:

I spoke to you this morning about this matter. You advised me that you would investigate and make determinations regarding Application 29449.

I am on the Division's mailing list to receive water right application notices throughout the State of California. As I advised you I do not recall receiving the public notice for Application 29449. To my knowledge, two other parties did not receive said notices. Those parties are Mr. Conrad Fisher and also native Americans near the project area. Mr. Fisher did file a formal protest against Application 29449. However, native Americans did not because of the lack of notice.

As I understand the matter, Application 29449 was noticed in 1989. Said application was renoticed by the Division twice early this year.

It is my further understanding in this matter that the applicant is proposing to construct a small hydro project on Stanshaw Creek and divert 3 cfs year round. There is a flume associated with the proposed project.

In discussing this matter with Mr. Fisher, Stanshaw Creek sustains steelhead trout and their habitat, and also that the native Americans claim that Stanshaw Creek also sustains Coho salmon and their habitat.

I am requesting the CSPA be allowed to file a late protest against Application 29449 because I did not receive said notice.

As I advised you, I also did not receive water right application notices in San Luis Obispo County. There may be other notices I have not received from the Division.

Consequently I believe it would be reasonable for the Division to accept a late filing of a CSPA protest against Application 29449.

I am requesting the CSPA be place on the mailing list for all submittals in this matter. Please have your staff fax to me a copy of Application 29449. Thank you.

I am also requesting a copy of the CEQA document for the subject water right application and subject project for the CSPA review and comment.

Our specific concern is the protection of steelhead and Coho salmon and their habitat that may be adversely effected by the subject project and subject water right application.

Please advise me regarding your decision in this matter.

Respectfully Submitted

SIGNED BY BOB BAIOCCHI

Robert J. Baiocchi, Consultant
P.O. Box 1790
Graeagle, CA 96103
Tel: 530-836-1115; Fax: 530-836-2062

cc: Mr. Steve Herrera, Environmental Unit
Division of Water Rights
P.O. Box 2000
Sacramento CA 95812-2000
By Fax

CSPA Board of Directors
By E-Mail

Interested Parties
By E-Mail

CONTACT REPORT

DIVISION OF WATER RIGHTS
STATE WATER RESOURCES CONTROL BOARD

SUBJECT: Application 29449

DATE: 06/28/2000 TIME: 16:35 DIVISION PERSONNEL: Robert E. Miller, EAS

PERSONAL [] WHERE: TELEPHONE [X] NUMBER: (530)225-2124

INDIVIDUAL(S)/ AGENCY CONTACTED: Jane Vorpapel / DFG

CONVERSATION DESCRIPTION:

I phoned Ms. Vorpapel to ask about an upcoming field visit (06/29/2000) to the Cole hydropower project she had scheduled with Margaret Tauzer (NMFS) to request some photos and additional info on the project. She informed me that the visit was postponed until sometime in late July. I asked to be included in future discussions about the project and to be informed as to the date of the next field visit so I could go along (I gave her my phone number and email address). I then asked a few questions about the project and the area:

Steelhead are present in Stanshaw Creek up to the culvert at Highway 96 [this is downstream of the POD]. The culvert is a barrier, but plans are being developed by the US Forest Service (USFS) and CalTrans to construct fish passage facilities under Highway 96 [this is also mentioned in Protest submitted by Jon B. Grunbaum, fisheries biologist for Klamath National Forest, Ukonom Ranger District]. There are a few other 'natural' barriers (log jams, boulders) upstream of Hwy. 96 that would be easily removed (bulldozer?, explosives?) from the stream channel if the Hwy. 96 project is completed. Early in the 1990's a DFG biologist investigated the hydro project and stated that:

"Since there are no anadromous fish at the POD, no fish screening device is needed. It's not worth installing such an expensive protection device to protect brook trout [there may also be resident rainbow trout present, but Jane wasn't sure]. Some of these brook trout may also stray into the diversion channel, but will find the habitat inadequate, and should venture back out into Stanshaw Creek."

Ms. Vorpapel stated that DFG may still hold this belief, HOWEVER, she would require screening devices if the fish passage problems at Hwy. 96 are alleviated, OR, a term in the permit stating that a screen must be installed if the passage problems are alleviated in the future. She also said that DFG is 'up in the air' with regards to minimum bypass requirements for this project, and that the site specific investigation will help in her determination.

Ms. Vorpapel has tried to locate Mr. Cole's recorded easement with the USFS at Somes Bar, California [The previous owner and applicant, Young, claimed a recorded easement to obtain right of access to the POD, which is owned by the USFS]. She has not been able to find any such document and also wondered if the applicant should have a USFS Use Permit as well as an easement. She also thought that this project would need a license or exemption from FERC since

SURNAME	REM <i>JEM</i>	<i>7-11-00</i>			
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the POD is on federal property.

Ms. Vorpapel did not think that coho salmon were in the lower portion of Stanshaw Creek and didn't think the habitat existed above Hwy. 96. [NMFS protested this application on the basis that "the Klamath River watershed supports federally listed coho salmon. Stanshaw Creek. . . lies within the Klamath River watershed and may support or contribute to the survival of this species."]

DECISION(S): If permit is to be issued, include a term to install fish screening devices as soon as possible.

ACTION ITEMS: Schedule a field visit w/ DFG, NMFS, and applicant to discuss screening and bypass terms. Contact Dennis Maria, DFG fisheries biologist for the area, to inquire about the Stanshaw/Irving/Klamath fishery and his concerns. Contact Jon Grunbaum (USFS) with similar questions and ask about Highway 96 culvert modifications.

SURNAME	REM <i>REM</i> <i>7/11/00</i>			
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CONTACT REPORT

DIVISION OF WATER RIGHTS

STATE WATER RESOURCES CONTROL BOARD

Subject A 29449

Division Personnel Yoko Mooring

Date 6/5/00 Time A.M.

Personal Where _____

Telephone Number (209) 293-4240

Individual(s)/Agency Contacted Dennis Hood. FAX 293-4243

Conversation Description Mr. Hood called to inform me that he was retained by the Fishers (protestant). He is a biologist and helps protest negotiations. I updated the status of the application and he requested copies of protests filed by other organizations. He mentioned that the Fishers would keep Mr. Swanson (lawyer) as the agent and he requested to fax copies to Mr. Swanson.

Dennis Hood.
K D H Environmental
P. O. Box 1107
West Point, CA 95255
Tel (209) 293-4240
fax (209) 293-4243

Decision(s) _____

Action Items _____

SURNAME	<u>Ym6/5/00</u>			
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CONTACT REPORT

DIVISION OF WATER RIGHTS
STATE WATER RESOURCES CONTROL BOARD

Subject A29449

Division Personnel Yoko Mooring

Date 5/22/00 Time 2:10 p.m

Personal Where _____

Telephone Number _____

Individual(s)/Agency Contacted Jane Vorpagel, DFG

Conversation Description Jane called to inform me of update. Applicant, Doug Cole is a teacher and will not be available until after 6/9/00 to meet with DFG. After that a DFG biologist will be on vac for 3 weeks. Since Doug told her that she could not come in his property when he was not available, she couldn't see his diversion but she decided to go ahead to check downstream Stanshow Creek. She requested a further time extension to submit a dismissal term by July 1.

Decision(s) _____

Action Items _____

SURNAME	<u>Ym 5/22/00</u>			
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State Water Resources Control Board

SURNAME
WR-4



Winston H. Hickox
Secretary for
Environmental
Protection

Division of Water Rights
901 P Street • Sacramento, California 95814 • (916) 657-0765
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 657-1485 • Web Site Address: <http://www.swrcb.ca.gov>
Division of Water Rights: <http://www.waterrights.ca.gov>

Gray Davis
Governor

In Reply Refer
to:331:YM:29449

MAY 17 2000

James R. Bybee
Protected Habitat Manager
National Marine Fisheries Service
777 Sonoma Avenue, Room 325
Santa Rosa, CA 95404

Dear Mr. Bybee:

**APPLICATION 29449 OF COLE, STANSHAW CREEK TRIBUTARY TO
KLAMATH RIVER IN SISIYOU COUNTY**

Your protest has been accepted. No further action is required by you at this time.

By copy of this letter, the applicant is instructed to answer your protest within 15 days from the date of this letter unless an extension of time is obtained. Please let us know promptly if you and the applicant reach agreement and you withdraw your protest.

If you have any questions, please contact me at (916) 657-1965.

Sincerely,

ORIGINAL SIGNED BY:

Yoko Mooring
Sanitary Engineering Associate
Application Unit

cc: Doug Cole, et al.
92520 Highway 96
Somes Bar, CA 95568

Ymooring:ym/tvonrotz:5-15-00/u:/ym/29449 NOAA PRO-ACCEPT

ym 5/16/00

LLD
5-16-00



State Water Resources Control Board

SURNAME
WR-4



Winston H. Hickox
Secretary for
Environmental
Protection.

Division of Water Rights
901 P Street • Sacramento, California 95814 • (916) 657-0765
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Division of Water Rights: <http://www.waterrights.ca.gov>

Gray Davis
Governor

In Reply Refer
to:331:YM:29449

MAY 17 2000

Konrad Fisher
c/o Jeffery J. Swanson
2515 Park Marina Drive, Suite 102
Redding, CA 96001

Dear Mr. Swanson:

APPLICATION 29449 OF COLE, STANSHAW CREEK TRIBUTARY TO KLAMATH RIVER IN SISIYOU COUNTY

Your protest has been accepted. No further action is required by you at this time.

By copy of this letter, the applicant is instructed to answer your protest within 15 days from the date of this letter unless an extension of time is obtained. Please let us know promptly if you and the applicant reach agreement and you withdraw your protest.

If you have any questions, please contact me at (916) 657-1965.

Sincerely,

ORIGINAL SIGNED BY.

Yoko Mooring
Sanitary Engineering Associate
Application Unit

cc: Doug Cole, et al.
92520 Highway 96
Somes Bar, CA 95568

Ymooring:tvonrotz:5-15-00/u:/ym/29449 KF PRO-ACCEPT

Ym 5/16/00

5-15-00
D
77



State Water Resources Control Board



Winston H. Hickox
Secretary for
Environmental
Protection

Division of Water Rights
901 P Street • Sacramento, California 95814 • (916) 657-0765
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 657-1485 • Web Site Address: <http://www.swrcb.ca.gov>
Division of Water Rights: <http://www.waterrights.ca.gov>

Gray Davis
Governor

In Reply Refer
to:331:YM:29449

MAY 17 2000

Jon B. Grunbaum
Fisheries Biologist
Klamath National Forest
Ukonom Ranger District
P.O. Drawer 410
Orleans, CA 95556-0410

Dear Mr. Grunbaum:

**APPLICATION 29449 OF COLE, STANSHAW CREEK TRIBUTARY TO
KLAMATH RIVER IN SISIYOU COUNTY**

We received your March 9, 2000 letter in which you expressed concerns about the flow reduction in Stanshaw Creek caused by the above referenced application. Since your letter is in response to the January 28, 2000 public notice for the application to appropriate water, your letter has been accepted as a protest and recorded in our files. No further action is required by you at this time.

By copy of this letter, the applicant is instructed to answer your protest within 15 days from the date of this letter unless an extension of time is obtained. Please let us know promptly if you and the applicant reach agreement and you withdraw your protest.

If you have any questions, please contact me at (916) 657-1965.

Sincerely,

ORIGINAL SIGNED RV.

Yoko Mooring
Sanitary Engineering Associate
Application Unit

cc: Doug Cole, et al.
92520 Highway 96
Somes Bar, CA 95568

Ymooring:ym/tvonrotz:5-15-00/u:/ym/29449 KNF PRO-ACCEPT

Ym 5/16/00

5-16-00

TO: Mike Falkenstein

SUBJECT: A2049, Cole

WR-4
DATE
4/15/00

M We have received 4 protests based on
E environmental considerations. An ES has not been
S assigned yet. Please let me know if all 4
S should be accepted or not.
A
G
E

RETURN TO	SIGNED Yoko Mooring	ADDRESS	PHONE 7-1965
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R
E
P
L
Y

SIGNED	ADDRESS	DATE
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00 MAR 20 PM 5:29

PROTEST

Based on Environmental Considerations, Public Interest, Public Trust, and Other Issues.
(Protests based on prior rights or prior filed applications should be completed on other side of form.)

APPLICATION 29449

1. I, (We) Konrad Fisher
Name of Protestant(s)
of 1721 Court Street, Redding, California 96001 (530) 244-0909 have read carefully a
copy Mailing address and zip code of protestant(s) Telephone Number
of, or a notice relative to, Application of Doug Cole, Heidi Cole, Norman Cole
Name of applicant
& Caroline Cole to appropriate from Stanshaw Creek
Name of source
at a point 2,500 feet W, 1,500 feet NE Corner 785,300'N, 1,589,300'E Cal Coord. Zone 1
Describe location of applicant's point of diversion
(S33 T.13N R. 6E, H.B.M.)

2. I, (We) protest the above application on:

ENVIRONMENTAL ISSUES, ETC.:

The appropriation will not best conserve the public interest, will have an adverse environmental impact and/or will adversely affect a public trust use of a navigable waterway.

- (a) Public interest protests should clearly indicate how the appropriation will affect the public.
- (b) Environmental protest should identify specific impacts and provide supporting recitals on issues such as: plants, animals or fish affected, erosion, pollution, aesthetics, etc.
- (c) Public trust protests must identify the navigable waters to be affected and how the project will impact public trust values.*

Protests of a general nature (not project specific) or opposed to constitutional or legislated state policy will not be accepted. A request for information or for studies to be conducted is not a protest.

OTHER ISSUES:

The appropriation will be contrary to law, will require access rights, will not be in Board's jurisdiction, or concerns other issues.

Facts and, if applicable, points of law which support the foregoing allegations are as follows: (See Attachment, Item 2.)

3. Under what conditions may this protest be disregarded and dismissed? (See Attachment, Item 3.)

(Conditions should be of a nature that the applicant can address and either except or submit mitigating measures.)

* For the purpose of filing a protest, navigable waters include streams and lakes that may be seasonally navigable in small recreational watercraft.

Date: March 15, 2000

Notes: Attach supplemental sheets as necessary.

Protests must be filed within the time specified in the notice of application.

Protestant(s) or authorized representative sign here

Jeffery J. Swanson, Attorney
Type or print name and title of representative, if applicable

2515 Park Marina Drive, Suite 102
Street Address

Redding, California 96001
City and State

(530) 225-8773
Telephone Number

**ATTACHMENT TO PROTEST OF APPLICATION 29449
BY KONRAD FISHER
(BASED ON INJURY TO ENVIRONMENTAL CONSIDERATIONS, ETC.)**

ITEM 2:

Relevant facts:

- 1) Stanshaw Creek is tributary to the Klamath River. During certain times of the year, Stanshaw Creek is navigable by small recreational watercraft. The Klamath River is also navigable by watercraft.
- 2) Protestant has personally observed salmon at the mouth of Stanshaw Creek that were unable to migrate upstream due to low water levels in the creek. Protestant is willing to provide a sworn declaration or to testify in this regard. Applicants' diversions will likely have a negative impact on the Stanshaw Creek fishery.
- 3) Michael David Fellows, caretaker for Protestant's family ranch, has personally observed salmon in Stanshaw Creek between the mouth and the point where the creek passes beneath State Highway 96. The viability of a fishery in that stretch of the creek is affected by Applicants' appropriation in that it reduces creek flows. Mr. Fellows is willing to provide a sworn declaration or to testify in this regard.
- 4) Lucille Albers, a 69 year old Native American who grew up in the vicinity of Stanshaw Creek has personal recollections of salmon in the creek when she was younger. Ms. Albers is willing to provide a sworn declaration or to testify in this regard.
- 5) The California Dept. of Fish & Game is investigating the feasibility of restoring the anadromous fishery in Stanshaw Creek above its intersection with Highway 96. Protestant is informed that DFG has submitted a letter to the SWRCB regarding the proposed project. The application should not be decided until DFG has evaluated the fish passage project and minimum flows required for instream purposes.

Legal Authority: The State Water Resources Control Board has broad authority to establish minimum flows and take other measures needed for protection of fisheries and other public trust resources. That authority is provided by Article X, Section 2 of the California Constitution, Water Code Sections 100 and 275, the public trust doctrine as articulated by the California Supreme Court in *National Audubon Society v. Superior Court*, (1983) 33 Cal.3d 419, 189 Cal. Rptr. 346, and Water Code Sections 1243 and 1253.

ITEM 3 (dismissal conditions):

This protest may be dismissed under the following conditions: (1) guaranteed minimum year-round stream flows in Stanshaw Creek to enhance the anadromous fishery and to ensure fish survival throughout the dry season, (2) Applicants' agreement to stop diverting water at any time to ensure minimum stream flows are satisfied, (3) Applicants' contribution of funds to restore and enhance the Stanshaw Creek anadromous fishery and to assist with the proposed fish passage project under Highway 96, (4) Applicants must submit evidence to show the availability of water in Stanshaw Creek in excess of those needed for the instream fishery and existing riparian rights and (5) Applicants must submit evidence to support their claimed pre-1914 water right, including evidence of continuous use.

MEMO TO FILES: A29449

FROM: Yoko Mooring

Yoko Mooring

DATE: March 15, 2000

I received, by fax, a protest letter (undated) from Michael David Fellows on March 8, 2000. March 8, was the last day to file the protest against Application 29449. This letter did not provide telephone number or address I can reach.

Fax machine printed out, on the top, "from American Heritage Real Estate, Phone No. 530 333 2185." This number is fax number and I cannot get through. I called American Heritage Real Estate. I have been informed that American Heritage Real Estate has three branch offices but there is no employee by that name. She also informed me that they occasionally receive inquiry calls about him from insurance companies.

I searched Internet telephone lists and found only one Michael D. Fellows in California.

Michael D. Fellows
92113 State Highway 96
Somes Bar, CA 95568-9706
(530) 469-3448

The address is so close to the project site, therefore, I assume he was the one sent the letter. However, the internet map indicate he is located about 5 miles upstream from the project and not on Stanshaw Creek. I need to send the letter clarifying his protest.



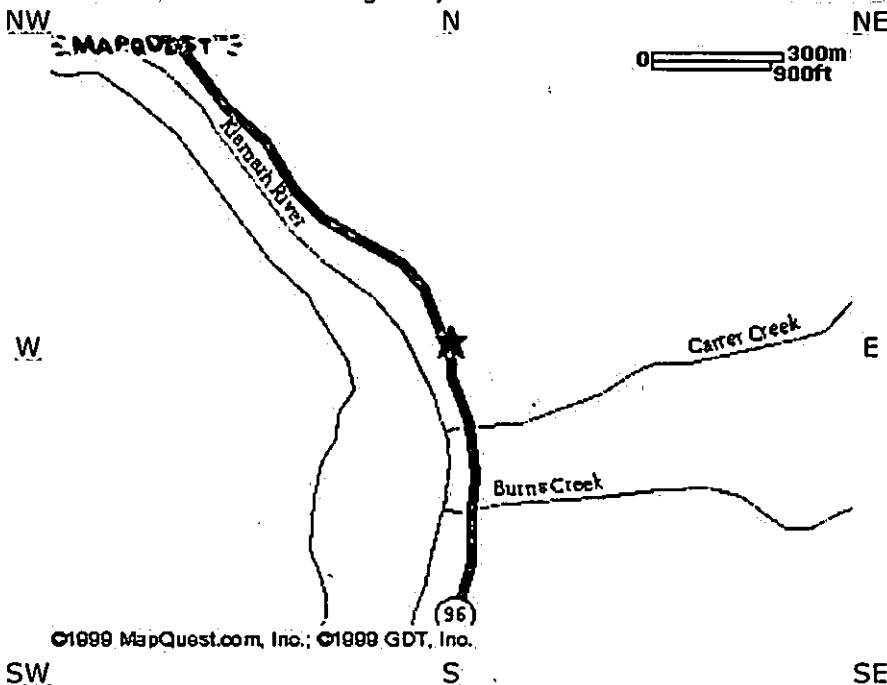
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Coverage	State	Tobacco Use	Birthdate(mmddyyyy)	Gender
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- PEOPLE
- BUSINESS
- TOLL-FREE
- Beta EVENTS
- WEB SITES
- COOL TOOLS
- Beta ADDRESS BOOK
- CALENDAR
- REVERSE LOOKUP
- PREMIUM BUSINESS LISTING
- MAPS
- DIRECTIONS
- New! FREE WEB PAGES
- ACCESS AT&T
- INSIDE ANYWHO
- update WHAT'S NEW
- ADD LISTING
- UPDATE LISTING
- REGISTRATION
- SIGN-IN
- SIGN-OUT
- ADMINISTRATION
- HELP

MAP RESULTS

Location: 92113 state highway 96 somes bar ca 95568-9706



Street City Regional National Zoom

Center Zoom In Zoom Out Identify Icon

Driving Directions

Use subject to License/Copyright

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CONTACT REPORT

DIVISION OF WATER RIGHTS
STATE WATER RESOURCES CONTROL BOARD

Subject A29449

Division Personnel Yoko Mooring Date 3/15/00 Time _____

Personal Where _____

Telephone Number (530)469-3322

Individual(s)/Agency Contacted Heidi Cole, applicant's wife.

Conversation Description I called (530)469-3437 to reach Mr. Cole. That was parent's house. I was asked to use (530)469-3322. When I called this #, I got Heidi Cole, Mr. Cole's wife. Unfortunately, she refused to discuss anything about water rights matter. She said she was not involved. Mr. Cole teaches at school. He will come home after 4:15 p.m. During school hours, he cannot make a long distance call nor calling home. I told her that I would call back 6:30 a.m tomorrow morning.

At 6:30 a.m 3/16/00, I talked to Mr. Cole. The following is the summary of our conversation: On Monday Mr. Cole discussed the matter w/ my supervisor. So, Tuesday I mailed a copy of notice by regular mail. But shortly he will receive a renotice packet by certified mail. He needs to post 2 copies (one at POD, one at the place people can see) and sends back the statement of posting. This means we're extending the protest period for another 40 days. He said he would post this time.

Decision(s) _____ Action Items _____

SURNAME	<u>Jm 3/15/00</u>			
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29449 COLE
UNITED STATES POSTAL SERVICE

gm



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

000244



Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. Addressee's Address
 2. Restricted Delivery
- Consult postmaster for fee.

3. Article Addressed to:

4a. Article Number

684514

4b. Service Type

- | | |
|---|------------------------------------|
| <input type="checkbox"/> Registered | <input type="checkbox"/> Certified |
| <input type="checkbox"/> Express Mail | <input type="checkbox"/> Insured |
| <input type="checkbox"/> Return Receipt for Merchandise | <input type="checkbox"/> COD |

7. Date of Delivery

3-24-00

5. Received By: (Print Name)

Douglas Cde

6. Signature (Addressee or Agent)

X [Signature]

8. Addressee's Address (Only if requested and fee is paid)

000245

Thank you for using Return Receipt Service.



United States
Department of
Agriculture

Forest
Service

Klamath
National
Forest

Ukonom Ranger District
P.O. Drawer 410
Orleans, CA 95556-0410
(530) 627-3291
TTY (530) 627-3291

WR-29449

File Code: 2670
Route To:

Date: 3/09/2000

Faxed copy
was received on 3/8/00
ym.

Subject: Application to appropriate water by permit #29449

To: Yoko Mooring - State of California: State Water Resources Control Board

Dear Yoko Mooring:

It has come to my attention that an application (#29449) has been filed to appropriate water from Stanshaw Creek. This application concerns me because the US Forest Service is considering constructing a fish passage facility within the square concrete box culvert under State Highway 96 that is believed to be restricting anadromous fish passage into Stanshaw Creek. The need for construction of fish passage facilities under Highway 96 was identified as an opportunity to restore anadromous fish passage into Stanshaw Creek. This opportunity was identified in the completed *Ishi Pishi / Ukonom Ecosystem Analysis (Klamath National Forest, 1998)*. Reductions of flow in Stanshaw Creek could make construction of fish passage structure under Highway 96 pointless because streamflows could become too low if much water is withdrawn.

Although anadromous fish are not documented in Stanshaw Creek on the Klamath National Forest GIS database, there are many anecdotal accounts that anadromous fish once used to access Stanshaw Creek before construction of the current Highway 96. Indeed, fish habitat surveys conducted in Stanshaw Creek have shown that at least several miles of suitable anadromous fish habitat exists in the Stanshaw Creek watershed.

With the listing of coho salmon as Threatened under the Federal Endangered Species Act and the possible future listing of steelhead, I would recommend that you delay any decision on application #29449 until more research on anadromous fish use of Stanshaw Creek is conducted. The overall strategy of restoring anadromous fish in the Klamath Basin and elsewhere depends greatly on restoring anadromous fish access to their historical habitats.

Thanks for your consideration. If you have any questions or need more information on this subject please feel to call me (530) 492-2243 or (530) 627-3291.

Jon B. Grunbaum
Fisheries Biologist



accept
ym 5/9/00



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

YM
29449
WR-4

Southwest Region
777 Sonoma Avenue, Room 325
Santa Rosa, California 95404

March 8, 2000 F/SWR4:WH

STATE WATER RESOURCES CONTROL BOARD
00 MAR 10 PM 4:38
DIV. OF WATER RIGHTS
SACRAMENTO

Received
faxed copy
on 3/8/00

Harry Schueller
Chief, Division of Water Rights
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, California 95812-2000

Dear Mr. Schueller:

By this letter the National Marine Fisheries Service registers its protest to the application for appropriative water right 29449 filed by Doug Cole, et al. to divert water from Stanshaw Creek, which is tributary to the Klamath River. The Project proposes to divert 3 cfs for the purpose of hydroelectric generation. Stanshaw Creek, which lies within the Klamath River watershed, may support or contribute to sustaining populations of the Central California Coast Evolutionarily Significant Unit (ESU) of coho salmon.

Background

Coho salmon (*Oncorhynchus kisutch*) comprising the Central California Coast ESU are listed as threatened (61 Fed. Reg. 56138; Oct. 31, 1996) under the Endangered Species Act (ESA). Protective regulations were published for coho on October 31, 1996. These protective regulations make it unlawful to "take" coho under section 9 of the ESA. "Take" as defined in the ESA, includes, in part, to harm or harass the species. These protective regulations describe certain activities that may impact coho and result in legal liability. These activities include, in part:

Unauthorized destruction/alteration of the species' habitat, such as removal of large woody debris or riparian shade canopy, dredging, discharge of fill material, draining, ditching, diverting, blocking, or altering stream channels or surface or ground water flow.

In contrast to the life history patterns of other anadromous salmonids, coho salmon in California generally exhibit a relatively simple 3-year life cycle. Adult salmon typically begin the freshwater migration from the ocean to their natal streams with the first fall rains. Upstream migration will continue from October to March, generally peaking in December and January (Shapovalov and Taft 1954).

accept
slg/0008
ym

Coho fry emerge from redds, in 38 to 101 days depending on stream temperature (Laufle et al. 1986). After emergence, the stream flow conditions and water temperature play a large role in survival. Low summer flows reduce potential rearing areas, may cause stranding in isolated pools, and increase vulnerability to predators (Sandercock 1991). Also the combination of reduced flows and high ambient air temperatures can raise the water temperature to the upper lethal limit of 25°C for juvenile coho (Brett 1952). Later in the year, high winter flows in typical coastal streams may be hostile to juvenile coho, causing displacement and disrupting their habitat and food sources. Juvenile coho show a preference for habitat containing deep pools (1 m or more), logs, rootwads, or boulders in heavily shaded sections of stream. Structurally complex streams that contain stones, logs and bushes in the water support larger numbers of fry (Scrivener and Andersen 1982). Although coho juveniles are found in both pool and riffle areas of a stream, they are best adapted to holding in pools (Hartman 1965).

Proposed Diversion

Appropriation of water will be accomplished by directly diverting 3 cfs from Stanshaw Creek for hydroelectric power generation via flume of 12-inch deep, 24-wide, and 5,200 ft long, then through a penstock of 16-inch diameter, 455 ft long steel pipe. The penstock uses a 200 ft fall to generate a maximum of 33.9 kilowatts at 80% efficiency at a powerplant just above Irving Creek. After use, the water will be returned to Irving Creek through a ditch, and thence to the Klamath River. The applicant has requested to divert water year-round, from January 1 through December 31. Stanshaw Creek, like other Northern California streams, is subject to critical, low flows during much of the year. Granting the proposed diversion will reduce flows in these streams and may degrade habitat necessary to the existence of certain life stages of coho salmon. Alteration of stream flows can result in salmonid mortality for a variety of reasons: migration delay resulting from insufficient flows or habitat blockages; loss of sufficient habitat due to dewatering and blockage; stranding of fish resulting from rapid flow fluctuations; entrainment of juveniles into poorly screened or unscreened diversions; and increased juvenile mortality resulting from increased water temperatures (Bergen and Filardo 1991; California Advisory Committee on Salmon and Steelhead Trout 1988; California Department of Fish and Game 1991; Columbia Basin Fish and Wildlife Authority 1991; Palmisano et al. 1993; Reynolds et al. 1993).

Based upon the need to protect and recover runs of listed coho salmon in the Klamath River watershed, we find it necessary to protest the proposed project because:

- 1) The Klamath River watershed supports federally listed coho salmon. Stanshaw Creek, upon which the proposed diversion would occur, lies within the Klamath River watershed and may support or contribute to the survival of this species.

- 2) by reducing and periodically interrupting stream flows in downstream reaches of Stanshaw Creek, the project may reduce available habitat for coho salmon. Even if coho salmon or its habitats are not located "immediately" downstream of the point of diversion, the affected stream reach may be an important area for the production or transport of invertebrate foods that subsequently drift downstream to rearing juveniles. In addition, many small tributaries to the Klamath River sustain year-round flows of coldwater that provide important thermal refuges for salmonids present within the Klamath mainstem. These coldwater refuges, which help sustain salmonids through warm summer months, should be protected.
- 3) the Applicant has not proposed to mitigate the effects of those reductions in available habitat by providing an adequate minimum bypass flow. The SWRCB's minimum bypass guideline of 60% mean annual flow does not provide adequate protection for anadromous salmonids.
- 4) the proposed diversion may potentially eliminate or appreciably reduce the magnitude or frequency of naturally occurring intermediate and high flows necessary for natural, channel maintenance processes and the successful movements of migrating fishes in Stanshaw Creek (Barinaga 1996; Poff et al. 1997). Limits on the rate of water withdrawal must be established in order to preserve a natural hydrograph that provides biologically and geomorphologically important intermediate and high flows. Also, the potential cumulative effect of the proposed diversion and other existing permitted and licensed diversions on biologically-important intermediate and high flows within the Stanshaw Creek watershed must be assessed.
- 5) The proposed diversion is one of several proposed and existing diversions in the Klamath watershed. Multiple diversions can collectively adversely affect listed salmonids by reducing available habitat for these species and related forage species, by reducing flows necessary for upstream and downstream passage of listed salmonids, and by interfering with natural stream channel processes. The cumulative effect of this project and other existing permitted and licensed projects in this watershed must be addressed before this permit is granted. If the proposed project and the existing water right permits and licenses have a significant, cumulative adverse effect on listed salmonids, this project should not be permitted. The SWRCB has a duty to disclose, evaluate, and mitigate the potential adverse cumulative impacts of the proposed project and other water diversion projects in the Stanshaw Creek and Klamath River watersheds on the threatened population of coho salmon.
- 6) The potential effect of the water diversion structure on upstream and downstream movements of listed salmonids has not been addressed. Diversion structures may block fishes from reaching their natal spawning areas. Diversion

structures also have the potential to entrain fishes, with resulting mortality.

Recommendations

Based upon the above concerns and potential impacts of the proposed project, we recommend that the project be modified to include the following mitigative provisions:

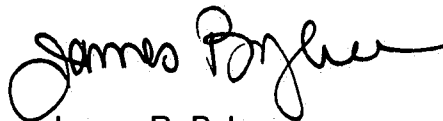
- a) Provide a minimum bypass flow that adequately protects coho salmon in reaches downstream from the point of diversion during all days of the year. The determination of the bypass flow's adequacy can be based on site specific biological investigations conducted in consultation with CFG and NMFS staff. Given the historically low flows during summer months and high temperatures in the Klamath River, we recommend that diversions not occur during the period June 1 through October 1.
- b) the plan should avoid construction or maintenance of a dam or diversion barrier across Stanshaw Creek.
- c) natural, periodic, intermediate and high flows should be maintained immediately below the project. This is a complex issue that concerns potential cumulative impacts of this and other upstream permitted and licensed water diversions within the Stanshaw Creek watershed. Protection of intermediate and high flows can be accomplished through an assessment of cumulative impacts and placing limits on the rate of instantaneous water withdrawals from the stream.
- d) the potential effect of the project on upstream and downstream movements of anadromous salmonids must be addressed. If anadromous salmonids ascend Stanshaw Creek or have the likely potential to ascend this tributary then adequate passage facilities and screening at the diversion intake should be provided.
- e) the proposed project should provide California Department of Fish and Game personnel access to all points of diversion and places of use for the purpose of conducting routine and or random monitoring and compliance inspections.

Because of the presence of federally and state listed species in the Klamath watershed, continued development of the watershed without a coordinated watershed plan would be inconsistent with the purposes of the California Endangered Species Act, the Federal Endangered Species Act, sections 100, 1243, 1243.5, and 275 of the State Water Code and the State Water Resources Control Boards's obligations and authorities under the Public Trust Doctrine.

Thank you for your cooperation in the above. We look forward to continued opportunities for NMFS and the State Water Resources Control Board to cooperate in the conservation of listed species. If you have any questions or comments concerning

the contents of this letter please contact Dr. William Hearn at (707) 575-6062.

Sincerely,



James R. Bybee
Protected Habitat Manager
Northern California

References Attached

cc: Doug Cole, et al., Applicants
R. Hight, CDFG, Sacramento
D. Koch, CDFG, Redding

References

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WR-4
29449
YAA

STATEMENT OF POSTING NOTICE

In the Matter of Application 29449
Before the State Water Resources Control Board
State of California

STATE WATER RESOURCES CONTROL BOARD
DIV. OF WATER RIGHTS
SACRAMENTO
00 APR - 6 PM 2:40
says:

R. G. SQUIRES

(Name of person who posted copies of notice)

that acting on behalf of the applicant
(insert here "that he is the applicant" or "that acting on behalf of the applicant")

in the matter of Application 29449 before the State Water Resources Control Board, State of California,

and did on the 31st day of March, 20 00, post
("and did" or "he did")

two copies of notice of said application identical to the attached copy.

That he posted one copy of said notice at front entrance to property
(at 92520 Hwy., Some Bar, Ca.) on outside of school bus
station.

and the other copy of said notice on boat house along roadway
(Here describe how and where posted as accurately as possible)
leading to project for which application 29449
is being made.

That each of said copies this posted occupied a conspicuous place in the locality to be affected by said proposed appropriation.

I declare under penalty of perjury that the foregoing is true. Signed on the 31st day of
2000 Some Bar
March 19, at (92520 Hwy. 96), California.

R. G. Squires
(Signature of person who posted copies of notice)

DO NOT DETACH



See attached, completed form.

State Water Resources Control Board

WR-4



Winston H. Hickox
Secretary for
Environmental
Protection

Division of Water Rights
901 P Street • Sacramento, California 95814 • (916) 657-0765
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 657-1485 • Web Site Address: <http://www.swrcb.ca.gov>
Division of Water Rights: <http://www.waterrights.ca.gov>

ray Davis
Governor

RENOUNCE OF APPLICATION TO APPROPRIATE WATER

APPLICATION 29449

DATE FILED March 27, 1989

This is a Renounce of Application 29449, which was originally noticed on January 28, 2000. Water Code section 1320 specifies that notice of an application shall be given by posting and by mailing. The mailing of the Notice of Application 29449 was done in accordance with the water code, but the posting was not. Therefore, this renounce shall be posted in at least two conspicuous places in the locality to be affected by the proposed appropriation. Anyone who wishes to protest this application may still do so and should read the information regarding protests below.

Notice is hereby given that Doug Dole, Heidi Cole, Norman D. Cole, and Caroline Cole have filed an application for a water right permit for diversion of water from Stanshaw Creek tributary to Klamath River in Siskiyou County. The State Water Resources Control Board (SWRCB) will determine whether a water right permit should be issued for the application and, if so, whether conditions should be included in the permit to protect the environment and other downstream water users. This notice provides a description of the proposed project and also describes the procedure and time frame for submittal of a protest against the application. This notice and future notices of Applications to Appropriate Water by Permit, may be viewed and printed at the Division of Water Rights web site www.waterrights.ca.gov. Any correspondence to the applicant shall be mailed to:

Doug Cole, et al.
92520 Highway 96
Somes Bar, CA 95568

DESCRIPTION OF THE PROJECT

The applicant seeks a right to directly divert 3 cubic feet per second from Stanshaw Creek for hydroelectric power generation via flume of 12-inch deep, 24-inch wide, and 5,200 feet long, then through penstock of 16-inch diameter, 455 feet long steel pipe. The penstock is utilizing 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 works is 56.8. After use, the water will be returned to Irving Creek through the ditch, thence the Klamath River.

The project is located approximately 6 miles north of Somes Bar and 2½ miles west of Marble Mountain Wilderness.

APPLICATION 29449

-2-

APPLICATION INFORMATION

The applicant proposes to divert water from Stanshaw Creek tributary to Klamath River. The Point of Diversion is located within the projected Section 33, T13N, R6E, HB&M. The Place of Use is at the powerhouse within the projected Section 33, T13N, R6E, HB&M. The diversion and place of use are located within the County of Siskiyou. The discharge will be returned to Irving Creek in projected Section 4 T12N, R6E, HB&M. Amount of water applied for: 3.0 cfs (Direct Diversion), not to exceed a total of 2,168.1 AFA. Water will be used for: Hydroelectric. The applicant has requested to divert water from: January 1 to December 31.

ENVIRONMENTAL INFORMATION

Based on a preliminary review of information provided by the applicant, the project may have a potential for causing a significant effect on the environment. If you have information which indicates that the project will cause a significant effect on the environment, please send this information immediately to:

Mr. Mike Falkenstein,
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000 Sacramento, CA 95812-2000.

This information will be reviewed in accordance with CEQA.

PROCEDURE FOR SUBMITTING PROTESTS

Any person may file a protest against the application. The protest must be submitted in writing to the SWRCB and to the applicant within **40 days** of the date of this notice. Parties may file protests based on any of the following factors:

- . Injury to existing water rights.
- . Adverse environmental impact.
- . Not in the public interest.
- . Contrary to law.
- . Not within the jurisdiction of the SWRCB.

All protests must clearly describe the objections to approval of the application and the factual basis for those objections. If the objection is based on injury to existing water rights, the protest must describe the specific injury to the existing water right that would result from approval of the application. In addition, the party claiming injury to prior water rights must provide specific information that describes the basis of the existing right, the date the use began, the quantity of

APPLICATION 29449

-3-

water used, the purpose of use and the place of use. Please note that any water right permit issued by the SWRCB is subject to and includes conditions to protect vested water rights.

If the protest is based on environmental grounds, or other factors listed above, the protest must be accompanied by a statement of facts supporting the basis of the protest. If sufficient information is not submitted, the SWRCB may reject the protest or request that the protestant submit additional information.

A protest should be submitted on a standard protest form available from the SWRCB, but can be submitted in letter form. Protests may be submitted by FAX, but the original(s) must be submitted to the SWRCB. An informational pamphlet is available that provides additional information relating to water rights and the procedure for filing protests. Please contact the person listed below if you would like a copy of the pamphlet or protest forms. For good cause, the SWRCB may grant an extension in time to file a protest. A request for an extension of time must be submitted in a timely manner, must specify the additional time required, and state why additional time is needed to file the protest.

RESOLUTION OF PROTESTS

A copy of the protest shall be sent to the applicant. The protest shall include a description of any measures that could be taken to resolve the protest, including modification of the application (i.e., amount, season of diversion, etc.) or conditions (i.e., fish bypass flow, measuring device, etc.) that could be included in the water right permit. The protestant(s) and the applicant are encouraged to discuss methods that could be used to resolve the protest. If the protest(s) can not be resolved, the SWRCB may conduct a field investigation with all interested parties or may hold a water right hearing.

Please contact the engineer listed below if you would like to request an extension of time to file a protest.

CONTACT PERSON

To obtain additional information regarding this project, or to obtain copies of the protest forms or pamphlet, please call Yoko Mooring at (916) 657-1965.

DATE OF RENOTICE:

MAR 17 2000



State Water Resources Control Board



Winston H. Hickox
Secretary for
Environmental
Protection

Division of Water Rights
901 P Street • Sacramento, California 95814 • (916) 657-0765
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 657-1485 • Web Site Address: <http://www.swrcb.ca.gov>
Division of Water Rights: <http://www.waterrights.ca.gov>

Gray Davis
Governor

In Reply Refer
to:331:YM:29449

APR 04 2000

T. James Fisher, et al.
c/o Jeffery J. Swanson
2515 Park Marina Drive, Suite 102
Redding, CA 96001

Dear Mr. Swanson:

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

Your protest based on prior rights against the above-described application has been received. Before we can accept your protest, we need some clarification to locate your point of diversion. Enclosed is a map showing the general vicinity of the project. Please mark your point of diversion and place of use and return it to this office.

You indicate that you use the creek for domestic and irrigation purposes under a claim of riparian right. The State Water Resources Control Board (SWRCB) does not have any record of your water use. State law requires filing a Statement of Water Diversion and Use with the SWRCB for diverting water under a claim of riparian right. Forms are enclosed for your use. For more specific information and exceptions to this general statement, please see the enclosed letter and pamphlet regarding Statements of Water Diversion and Use.

If you have any questions, please call me at (916) 657-1965.

Sincerely,

ORIGINAL SIGNED BY
Yoko Mooring
Sanitary Engineering Associate
Application Unit

Enclosures

cc: Doug Cole, et al.
92520 Highway 96
Somes Bar, CA 95568

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Control Tag #14958

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ym 4/3/00

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4-4-00

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YM
WR 29449

PROTEST

00 MAR 20 PM 5:29

Based on Prior Filed Application or Injury to Prior Rights
(Protests based on OTHER considerations should be completed on other side of form.)

APPLICATION 29449

1. I, (We) T. James Fisher; J.W. Fisher Logging Company; Phylis Fisher
Name of Protestant(s)
of 1721 Court Street, Redding, CA 96001, (530) 244-0909 have read carefully a
Mailing address and zip code of protestant(s) Telephone Number
copy of, or a notice relative to, Application of Doug Cole, Heidi Cole, Norman Cole &
Name of applicant
Caroline Cole to appropriate from Stanshaw Creek
Name of source
at a point 2,500 feet W, 1,500 feet NE Corner 785,300'N, 1,589,300'E Cal Coord. Zone 1
Describe location of applicant's point of diversion
(§33 T.13N R. 6E, H.B.M.)

2. I, (We) desire to protest against the approval thereof because to the best of our information and belief the proposed appropriation
My or our
will result in injury to us as follows: (See attachment, Item 2.)
Me or us State the injury which will result

3. Protestant claims an interest in the use of water from the source from which applicant proposes to divert which is based upon: Riparian rights
Prior application; appropriative permit or license; notice posted or use begun prior to December 19, 1914; riparian claim; etc.
Please provide application, permit, license, or statement of water diversion and use numbers which cover your use of water, or state "none":
None

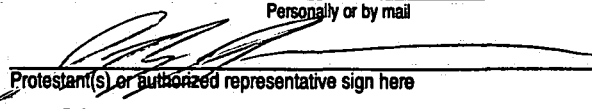
4. Where is your diversion point located? NW 1/4 of SW 1/4 of Section 33, T. 13N, R. 6E, H B&M
Is your point of diversion downstream from applicant point of diversion? Yes
Yes, No, or at same point

5. The extent of present and past use of water by protestant or his predecessors in interest from this source is as follows (leave blank if protest based on prior filed application): Year round uses, including domestic and irrigation.
(a) approximate date first use made unknown
(b) amount used unknown
(c) time of year when diversion is made January 1 - December 31
(d) purpose(s) of use Drinking water, domestic uses, garden and fruit tree irrigation.

6. Under what conditions may this protest be disregarded and dismissed? (See Attachment, Item b.)
(Conditions should be of a nature that the applicant can address, such as minimum by-pass flows, measuring devices required, acknowledgement of prior rights, etc..)

7. A true copy of this protest has been served upon the applicant's attorney by mail.
Personally or by mail

Date: March 15, 2000


Protestant(s) or authorized representative sign here
Jeffery J. Swanson, Attorney
Type or print name and title of representative, if applicable
2515 Park Marina Drive, Suite 102
Street Address
Redding, California 96001
City and State
(530) 225-8773
Telephone Number

Notes: Attach supplemental sheets as necessary.
Protests must be filed within the time specified in the notice of application.

**ATTACHMENT TO PROTEST OF APPLICATION 29449
BY JAMES FISHER AND J.W. FISHER LOGGING
(BASED ON INJURY TO PRIOR RIGHTS)**

ITEM 2:

Applicants' appropriation causes, and will cause, a drastic reduction in the natural flow of Stanshaw Creek, particularly during the dry season. This results in insufficient water for Protestants' domestic and irrigation needs, and causes an aesthetic impact to Protestants' riparian property. The diversion also impacts the Stanshaw Creek anadromous fishery.

Applicants should not be given a water right simply because they have operated an illegal and unlicensed diversion for the past few years.

ITEM 6:

This protest may be dismissed if the applicants (1) guarantee minimum year-round stream flows in Stanshaw Creek to meet Protestants' needs as well as those of the instream fishery, (2) agree to stop diverting water to ensure minimum stream flows are satisfied, (3) acknowledge Protestants' prior rights, (4) contribute funding to restore the Stanshaw Creek fishery and to assist with the fish passage project under Highway 96, (5) submit evidence to show availability of water in Stanshaw Creek in excess of those needed for the instream fishery and existing riparian rights (6) submit evidence to support their claimed pre-1914 water right, including evidence of continuous use.

JEFFERY J. SWANSON
ATTORNEY AT LAW

2515 PARK MARINA DRIVE, SUITE 102
REDDING, CA 96001-2831

TEL. 530.225.8773/FAX.225.8598
e-mail: jswanson@snowcrest.net

March 17, 2000

VIA OVERNIGHT MAIL

Yoko Mooring
Sanitary Engineering Associate
Application Unit
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, California 95812-2000

RE: Application 29449 of Cole, Stanshaw Creek Tributary
to Klamath River in Siskiyou County
Your: 331:YM:29449

Dear Ms. Yoko Mooring,

Enclosed herewith please find Protest form based on prior filed application or injury to prior rights and Protest form based on environmental considerations, public interest, public trust and other issues.

If you have any questions, please do not hesitate to contact Mr. Swanson.

Sincerely,



Mimi Fugitt
Legal Secretary to
Jeffery J. Swanson

mlf/
Enclosures (as stated)

cc: Doug Cole, et al (w/enclosures via U.S. mail)
92520 Highway 96
Somes Bar, California 95568



State Water Resources Control Board



Winston H. Hickox
Secretary for
Environmental
Protection

Division of Water Rights
901 P Street • Sacramento, California 95814 • (916) 657-0765
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 657-1485 • Web Site Address: <http://www.swrcb.ca.gov>
Division of Water Rights: <http://www.waterrights.ca.gov>

Gray Davis
Governor

MEMORANDUM

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

ORIGINAL SIGNED BY

FROM: Yoko Mooring
Sanitary Engineering Associate
Application Unit
DIVISION OF WATER RIGHTS

DATE: APR 04 2000

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

Your protest has been accepted. In your protest, you request an extension of time for a field review to develop suitable minimum bypass flow conditions. You are granted the extension of time until July 1, 2000 to complete your study and submit protest dismissal terms. The applicant is not required to answer your protest until these terms are submitted.

Please let us know promptly if you and the applicant reach agreement and you withdraw your protest. If you have any questions, please call me at (916) 657-1965.

cc: Doug Cole, et al.
92520 Highway 96
Somes Bar, CA 95568

YMOORING:3/30/00:ym\pminer:4-3-00
u:\ym\29449 DFG

Control Tag #14957

SURNAME

ym4/3/00

LLD
4-4-00

000263

WR 29449

State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O.Box 2000, Sacramento, CA 95812-2000
(916) 657-2170

STATE WATER RESOURCES CONTROL BOARD

00 MAR 20 PM 5:25

DIV. OF WATER RIGHTS
SACRAMENTO

PROTEST

Based on Environmental Considerations, Public Interest, Public Trust, and Other Issues
(Protests based on prior rights or prior filed applications should be completed on other side of form.)

APPLICATION 29449

1. I, (We) California Department of Fish and Game
Name of Protestant(s)
of 601 Locust Street, Redding, California 96001, (530) 225-2124 have read carefully a copy
Mailing address and zip code of protestant(s) Telephone Number
of, or a notice relative to, Application 29449 of Doug Cole, et al.
Name of applicant
to appropriate from Stanshaw Creek tributary to Klamath River
Name of source
at a point of diversion located within the projected Section 33, Township 13N,
Describe location of applicant's point of diversion
Range 6E, HB&M in Siskiyou County.

2. I, (We) protest the above application on:
 ENVIRONMENTAL ISSUES, ETC.:
The appropriation will not best conserve the public interest, will have an adverse environmental impact and/or will adversely affect a public trust use of a navigable waterway.
(a) Public interest protests should clearly indicate how the appropriation will affect the public.
(b) Environmental protest should identify specific impacts and provide supporting recitals on issues such as: plants, animals or fish affected, erosion, pollution, aesthetics, etc.
(c) Public trust protests must identify the navigable waters to be affected and how the project will impact public trust values.
Protests of a general nature (not project specific) or opposed to constitutional or legislated state policy will not be accepted. A request for information or for studies to be conducted is not a protest.

OTHER ISSUES:
The appropriation will be contrary to law, will require access rights, will not be in Board's jurisdiction, or concerns other issues.

Facts and, if applicable, points of law which support the foregoing allegations are as follows: Our right to protest is based on Sections 1801 of the Fish and Game Code; Sections 1243 and 1257 of the Water Code. The applicant proposes to divert 3 cfs from Stanshaw Creek for hydro electric generation, from January 1 to December 31. Reduced stream flows during critical periods could adversely affect fish resources or other sensitive species in Stanshaw Creek.

3. Under what conditions may this protest be disregarded and dismissed? 1. The Department requests a field review with the applicant to develop suitable minimum bypass flow conditions for the protection of fish resources downstream. 2. The Department requests a time extension of 45 days after the above requested field review to develop minimum bypass flow conditions and season of diversion restrictions.

4. A true copy of this protest has been served upon the applicant by Mail
Personally or by mail

* For the purpose of filing a protest, navigable waters include streams and lakes that may be seasonally navigable in small recreational watercraft.

Date: March 17, 2000

Notes: Attach supplemental sheets as necessary.
Protests must be filed within the time specified in the notice of application.

cc: Applicant, HCPB, Ms. J. Vorpapel-R1
Mr. William Hearn, NMFS, Santa Rosa
Messrs. Dennis Maria and Ron Presley-R1

Donald Koch
Protestant(s) or authorized representative sign here
Donald B. Koch, Regional Manager, NCNCR
Type or print name and title of representative, if applicable
601 Locust Street
Street Address
Redding, California 96001
City and State
(530) 225-2124 (Ms. Jane Vorpapel)
Telephone Number

000254
4/4/00 ym

State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O.Box 2000, Sacramento, CA 95812-2000
(916) 657-2170

PROTEST

Based on Prior Filed Application or Injury to Prior Rights
(Protests based on OTHER considerations should be completed on other side of form.)

APPLICATION _____

1. I, (We) _____
Name of Protestant(s)
of _____, (_____) _____ have read carefully a copy
Mailing address and zip code of protestant(s) Telephone Number
of, or a notice relative to, Application _____ of _____
Name of applicant
_____ to appropriate from _____
Name of source
at a point _____
Describe location of applicant's point of diversion

2. I, (We) desire to protest against the approval thereof because to the best of _____ information and belief the proposed appropriation
My or our
will result in injury to _____ as follows: _____
Me or us State the injury which will result

3. Protestant claims an interest in the use of water from the source from which applicant proposes to divert which is based upon: _____
Prior application; appropriative permit or license; notice posted or use begun prior to December 19, 1914; riparian claim; etc.
Please provide application, permit, license, or statement of water diversion and use numbers which cover your use of water, or state "none":

4. Where is your diversion point located? _____ 1/4 of _____ 1/4 of Section _____, T. _____, R. _____, _____ B&M
Is your point of diversion downstream from applicant point of diversion? _____
Yes, No, or at same point

5. The extent of present and past use of water by protestant or his predecessors in interest from this source is as follows (leave blank if protest based on prior filed application): _____
(a) approximate date first use made _____
(b) amount used _____
(c) time of year when diversion is made _____
(d) purpose(s) of use _____

6. Under what conditions may this protest be disregarded and dismissed? _____
(Conditions should be of a nature that the applicant can address, such as minimum by-pass flows, measuring devices required, acknowledgement of prior rights, etc.)

7. A true copy of this protest has been served upon the applicant _____
Personally or by mail

Date: _____

Protestant(s) or authorized representative sign here

Type or print name and title of representative, if applicable

Street Address

City and State

(_____) Telephone Number

Notes: Attach supplemental sheets as necessary.
Protests must be filed within the time specified in the notice of application.

WATER CODE

1243. The use of water for recreation and preservation and enhancement of fish and wildlife resources is a beneficial use of water. In determining the amount of water available for appropriation for other beneficial uses, the board shall take into account, whenever it is in the public interest, the amounts of water required for recreation and the preservation and enhancement of fish and wildlife resources.

The board shall notify the Department of Fish and Game of any application for a permit to appropriate water. The Department of Fish and Game shall recommend the amounts of water, if any, required for the preservation and enhancement of fish and wildlife resources and shall report its findings to the board.

This section shall not be construed to affect riparian rights.

1257. In acting upon application to appropriate water, the board shall consider the relative benefit to be derived from (1) all beneficial uses of the water concerned including, but not limited to, use for domestic, irrigation, municipal, industrial, preservation and enhancement of fish and wildlife, recreational, mining and power purposes, and any uses specified to be protected in any relevant water quality control plan, and (2) the reuse or reclamation of the water sought to be appropriated, as proposed by the applicant. The board may subject such appropriations to such terms and conditions as in its judgment will best develop, conserve, and utilize in the public interest, the water sought to be appropriated.

FISH AND GAME CODE
SECTION 1801

1801. It is hereby declared to be the policy of the state to encourage the preservation, conservation, and maintenance of wildlife resources under the jurisdiction and influence of the state. This policy shall include the following objectives:

(a) To maintain sufficient populations of all species of wildlife and the habitat necessary to achieve the objectives stated in subdivisions (b), (c), and (d).

(b) To provide for the beneficial use and enjoyment of wildlife by all citizens of the state.

(c) To perpetuate all species of wildlife for their intrinsic and ecological values, as well as for their direct benefits to all persons.

(d) To provide for aesthetic, educational, and nonappropriative uses of the various wildlife species.

(e) To maintain diversified recreational uses of wildlife, including the sport of hunting, as proper uses of certain designated species of wildlife, subject to regulations consistent with the maintenance of healthy, viable wildlife resources, the public safety, and a quality outdoor experience.

(f) To provide for economic contributions to the citizens of the state, through the recognition that wildlife is a renewable resource of the land by which economic return can accrue to the citizens of the state, individually and collectively, through regulated management. Such management shall be consistent with the maintenance of healthy and thriving wildlife resources and the public ownership status of the wildlife resources.

(g) To alleviate economic losses or public health or safety problems caused by wildlife to the people of the state either individually or collectively. Such resolution shall be in a manner designed to bring the problem within tolerable limits consistent with economic and public health considerations and the objectives stated in subdivisions (a), (b) and (c).

(h) It is not intended that this policy shall provide any power to regulate natural resources or commercial or other activities connected therewith, except as specifically provided by the Legislature.



State Water Resources Control Board



Winston H. Hickox
Secretary for
Environmental
Protection

Division of Water Rights
901 P Street • Sacramento, California 95814 • (916) 657-0765
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 657-1485 • Web Site Address: <http://www.swrcb.ca.gov>
Division of Water Rights: <http://www.waterrights.ca.gov>

Gray Davis
Governor

In Reply Refer
to:331:YM:29449

APR 04 2000

James R. Bybee
Protected Habitat Manager
National Marine Fisheries Service
Southwest Region
777 Sonoma Avenue, Room 325
Santa Rosa, CA 95404

Dear Mr. Bybee:

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

Your protest has been received. No further action is required by you at this time. We will contact you shortly regarding the status of your protest and what additional information, if any, is needed.

If you have any questions, please contact me at (916) 657-1965.

Sincerely,

ORIGINAL SIGNED BY:

Yoko Mooring
Sanitary Engineering Associate
Application Unit

Control Tag #14936 AND 14941

YMooring:ym/tvonrotz:4-3-00
u:/ym/29449 PRO-REC NMFS

SURNAME
PRO-REC (9-99)

ym 4/3/00

LLD
4-4-00

000268



State Water Resources Control Board



Division of Water Rights

901 P Street • Sacramento, California 95814 • (916) 657-0765
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Winston H. Hickox
Secretary for
Environmental
Protection

Gray Davis
Governor

APR 04 2000

In Reply Refer
to:331:YM:29449

Mr. Konrad Fisher
c/o Jeffery J. Swanson
2515 Park Marina Drive, Suite 102
Redding, CA 96001

Dear Mr. Swanson:

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

Your protest has been received. No further action is required by you at this time. We will contact you shortly regarding the status of your protest and what additional information, if any, is needed.

If you have any questions, please contact me at (916) 657-1965.

Sincerely,

ORIGINAL SIGNED BY.

Yoko Mooring
Sanitary Engineering Associate
Application Unit

Control Tag #14959

YMooring:ym/tvonrotz:4-3-00
u:/ym/29449 PRO-REC Fisher

SURNAME
PRO-REC (9-99)

ym 4/3/00

LLA
4-4-00

000269

From: Mike Falkenstein
To: Ross Swenerton
Date: 3/22/00 11:23AM
Subject: Re: Application 29449, Cole

Ross: I recommended using the older language for the renote of the subject application because it stated that the project would have a significant effect on the environment. The current language does not say this. I based this on discussions I had with Chris Murray (also in his field notes) after his field visits to the project. He saw trout in the stream.

I would suggest that we do a short form IBUA at the time we do the initial study. Ed did not ask for funds as required under the regulations to do the long form IBUA. Also when you get a chance have one of the students or new people go over the material and finish up the prelim so we can put it in the file. I suggest treating it like any other water diversion project that does not require an IBUA for the purposes of the prelim.

Mike Falkenstein
SWRCB
Division of Water Rights
(916) 657-1377
FAX (916) 657-1485
mfalkenstein@waterrights.swrcb.ca.gov
901 P Street
Sacramento CA 95814
US mail
PO Box 2000
Sacramento CA 95812-2000

>>> Ross Swenerton 03/22/00 07:29AM >>>

Mike: Our records show that in 1989 EAS found subject application (for a small hydro project) incomplete because the Instream Beneficial Use Assessment (IBUA) required by WC 1250.5 and CCR 709 to complete the application had not been prepared by the applicant. Although to date we still have not received the required IBUA, I just discovered this application was noticed on 3/17/00, based on notice language you gave to Yoko on 11/4/99. In order to complete a proper environmental review of this project and prepare an appropriate CEQA document, we will need information on the affected streamcourse equivalent to that which would have been provided by an IBUA. Given that the Division has now officially declared the application complete without the IBUA, please advise me on how you propose we should obtain the necessary information, and who should pay for it. Thanks for your attention to this matter.

Ross Swenerton, Chief
Environmental Review Unit 2
Division of Water Rights
State Water Resources Control Board
Phone: (916) 657-2199
FAX: (916) 657-1485
E-Mail: RSwenerton@waterrights.swrcb.ca.gov



State Water Resources Control Board



Winston H. Hickox
Secretary for
Environmental
Protection

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Division of Water Rights: <http://www.waterrights.ca.gov>

Gray Davis
Governor

In Reply Refer
to:331:YM:29449

MAR 30 2000

Mr. G. Neil Tocher
1903 Park Marina Drive
Redding, CA 96001

Dear Mr. Tocher:

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

Thank you for your letter of March 1, 2000, in which you express your full support of the above referenced project. Your letter will remain with the files of Application 29449. Pursuant to your request, your name has been put on the mailing list to receive a copy of any permit issued pursuant to Application 29449.

If you have any questions, please call me at (916) 657-1965.

Sincerely,

ORIGINAL SIGNED BY:

Yoko Mooring
Sanitary Engineering Associate
Application Unit

cc: Doug Cole, et al.
92520 Highway 96
Somes Bar, CA 95568

YMOORING:3/29/00:ym/pminer:3-30-00
u:\ym\29449tocher

Control Tag #14918

SURNAME

ym 3/30/00

CGD
3-30-00

000271



State Water Resources Control Board



Winston H. Hickox
Secretary for
Environmental
Protection

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901 P Street • Sacramento, California 95814 • (916) 657-0765
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Gray Davis
Governor

MAR 30 2000

In Reply Refer
to:331:YM:29449

Mr. Michael David Fellows
92113 State Highway 96
Somes Bar, CA 95568-9706

Dear Mr. Fellows:

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

I have received, by facsimile transmission, a letter (undated) from Michael David Fellows on March 8, 2000. The letter expresses concerns regarding Stanshaw Creek and protests the above referenced application. Unfortunately, this letter provides no telephone number or address. I have searched Internet telephone lists and found only one Michael D. Fellows in California. I tried that number but was unsuccessful.

Subsequently, I have received a protest from Mr. Konrad Fisher. In his protest, Mr. Fisher states that Michael David Fellows is a caretaker for Protestant's family ranch. Therefore, we will process your letter and Mr. Fisher's protest as one entry and from now on, all correspondence from this office will be mailed to Mr. Jeffery J. Swanson since Mr. Swanson is designated as the authorized agent for the Fishers.

If you have any questions, please call me at (916) 657-1965.

Sincerely,

ORIGINAL SIGNED BY:

Yoko Mooring
Sanitary Engineering Associate
Application Unit

cc: Jeffery J. Swanson
2515 Park Marina Drive, Suite 102
Redding, CA 96001

Konrad Fisher
1721 Court Street
Redding, CA 96001

YMOORING:3/29/00:ym/pminer:3-30-00
u:\ym\29449Fellows

SURNAME

ym 3/30/00

000272

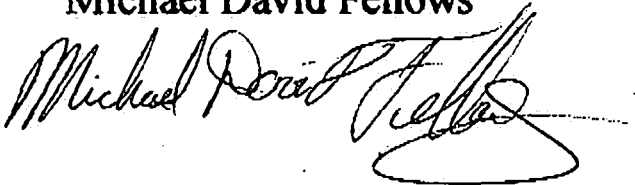
ym

attention; Yoko Mooring

I Michael David Fellows am the caretaker of the property at the mouth of Stinshaw Creek. I have an opportunity to observe the wildlife of the Stinshaw creek. I have seen salmon and steelhead attempting to swim up the mouth of the creek. At this date there is not enough water flow for the fall salmon run to get up the creek. At the same time I have seen over ¾ of free flowing creek water being diverted by Marble Mountain ranch.

I use the creek for agriculture and life support. Let it be known that I am in protest of any stoppage of free flowing water in Stinshaw creek.

Michael David Fellows



YM
WIR-4 29449
29449

G. NEIL TOCHER
ATTORNEY AT LAW
1903 Park Marina Drive
Redding, CA 96001

Phone (530)244-2525

Fax (530)244-0380

March 1, 2000

State Water Resources Control Board
Division of Water Rights
P. O. Box 2000
Sacramento, CA 95812-2000

Attn: Yoko Mooring

Re: Application # 29449

Dear Ms. Mooring:

I have recently received Notice of Application to
Appropriate Water under Application 29449.

Inasmuch as I am a downstream user of the water, I would
like to make the following observations, comments and
recommendations.

I feel that the application to divert water from Stanshaw
Creek for purposes of hydroelectric is appropriate, and I would
certainly support it.

I believe the diversion that they are seeking has a history
of longstanding, and what the Coles seek to do has already been
in place. I fully support this application.

Inasmuch as I am a downstream user of some of this runoff
water, I would urge and recommend that the water flowing from the
hydroelectric be maintained in the same waterway that it has been
for the past number of years.


This runoff water is a source for irrigation and other
domestic use for the Blue Heron Ranch. I, of course, own the
Blue Heron.

Again, inasmuch as I am the only downstream user of the
water in question, I wholeheartedly recommend the appropriation
of the water as set forth in application #29449, subject however
to the above comments.

Ms. Mooring
March 1, 2000
Page 2

Would you please put me on your mailing list, and send me a copy of the final permit.

Very truly yours,



G. NEIL TOCHER

GNT/jw
cc: Doug Cole



State Water Resources Control Board

SURNAME
WR-4



Gray Davis
Governor

Winston H. Hickox
Secretary for
Environmental
Protection

Division of Water Rights
901 P Street • Sacramento, California 95814 • (916) 657-2170
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 657-1485 • Web Site Address: <http://www.swrcb.ca.gov>
Division of Water Rights: <http://www.waterrights.ca.gov>

March 17, 2000

INSTRUCTIONS TO APPLICANT

APPLICATION 29449

Your application(s) has been determined to be complete in accordance with Section 65943, Division 1, Title 7 of the California Government Code. Please note that you are not authorized to divert or develop the use of the water covered by this application(s) until a permit has been issued for the project.

The California Water Code requires that all water right applications be noticed to the public. To accomplish this, you must do the following:

1. Post notices of your application(s) as soon as possible in two conspicuous locations near your project. Copies of the notice are included for this purpose. **THESE NOTICES MUST BE POSTED BY APRIL 6, 2000.**
2. The person who posts the notice must complete the attached form entitled "Statement of Proof of Posting". **THE PROOF OF POSTING MUST BE FILED WITH THIS OFFICE BY APRIL 26, 2000.** Do not detach the copy of the notice from the statement of posting.

The State Water Resources Control Board may cancel your application(s) if you fail to mail a copy of the Statement of Proof of Posting prior to the required date.

Water right notices are designed for the mutual protection of the applicant and other parties claiming prior rights. Although vested rights to the use of water from the source from which an appropriation is sought cannot be lost, prejudiced, or impaired by failure to protest an application, known claimants to prior rights have been given this notice so that they may protest if they believe the proposed appropriation(s) will result in injury to them.

All parties filing a protest against this application(s) should furnish you, as well as this office, a copy of their protest. We will then notify you which protests are accepted and provide instructions for answering them.

HARRY M. SCHUELLER, Chief
Division of Water Rights

Enclosures

CERTIFIED



State Water Resources Control Board

WR-4



Winston H. Hickox
Secretary for
Environmental
Protection

Division of Water Rights
901 P Street • Sacramento, California 95814 • (916) 657-0765
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 657-1485 • Web Site Address: <http://www.swrcb.ca.gov>
Division of Water Rights: <http://www.waterrights.ca.gov>

Ray Davis
Governor

RENOUNCE OF APPLICATION TO APPROPRIATE WATER

APPLICATION 29449

DATE FILED March 27, 1989

This is a Renounce of Application 29449, which was originally noticed on January 28, 2000. Water Code section 1320 specifies that notice of an application shall be given by posting and by mailing. The mailing of the Notice of Application 29449 was done in accordance with the water code, but the posting was not. Therefore, this renounce shall be posted in at least two conspicuous places in the locality to be affected by the proposed appropriation. Anyone who wishes to protest this application may still do so and should read the information regarding protests below.

Notice is hereby given that Doug Dole, Heidi Cole, Norman D. Cole, and Caroline Cole have filed an application for a water right permit for diversion of water from Stanshaw Creek tributary to Klamath River in Siskiyou County. The State Water Resources Control Board (SWRCB) will determine whether a water right permit should be issued for the application and, if so, whether conditions should be included in the permit to protect the environment and other downstream water users. This notice provides a description of the proposed project and also describes the procedure and time frame for submittal of a protest against the application. This notice and future notices of Applications to Appropriate Water by Permit, may be viewed and printed at the Division of Water Rights web site www.waterrights.ca.gov. Any correspondence to the applicant shall be mailed to:

Doug Cole, et al.
92520 Highway 96
Somes Bar, CA 95568

684514 ✓

DESCRIPTION OF THE PROJECT

The applicant seeks a right to directly divert 3 cubic feet per second from Stanshaw Creek for hydroelectric power generation via flume of 12-inch deep, 24-inch wide, and 5,200 feet long, then through penstock of 16-inch diameter, 455 feet long steel pipe. The penstock is utilizing 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 works is 56.8. After use, the water will be returned to Irving Creek through the ditch, thence the Klamath River.

The project is located approximately 6 miles north of Somes Bar and 2½ miles west of Marble Mountain Wilderness.

APPLICATION 29449

-2-

APPLICATION INFORMATION

The applicant proposes to divert water from Stanshaw Creek tributary to Klamath River. The Point of Diversion is located within the projected Section 33, T13N, R6E, HB&M. The Place of Use is at the powerhouse within the projected Section 33, T13N, R6E, HB&M. The diversion and place of use are located within the County of Siskiyou. The discharge will be returned to Irving Creek in projected Section 4 T12N, R6E, HB&M. Amount of water applied for: 3.0 cfs (Direct Diversion), not to exceed a total of 2,168.1 AFA. Water will be used for: Hydroelectric. The applicant has requested to divert water from: January 1 to December 31.

ENVIRONMENTAL INFORMATION

Based on a preliminary review of information provided by the applicant, the project may have a potential for causing a significant effect on the environment. If you have information which indicates that the project will cause a significant effect on the environment, please send this information immediately to:

Mr. Mike Falkenstein,
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000 Sacramento, CA 95812-2000.

This information will be reviewed in accordance with CEQA.

PROCEDURE FOR SUBMITTING PROTESTS

Any person may file a protest against the application. The protest must be submitted in writing to the SWRCB and to the applicant within **40 days** of the date of this notice. Parties may file protests based on any of the following factors:

- . Injury to existing water rights.
- . Adverse environmental impact.
- . Not in the public interest.
- . Contrary to law.
- . Not within the jurisdiction of the SWRCB.

All protests must clearly describe the objections to approval of the application and the factual basis for those objections. If the objection is based on injury to existing water rights, the protest must describe the specific injury to the existing water right that would result from approval of the application. In addition, the party claiming injury to prior water rights must provide specific information that describes the basis of the existing right, the date the use began, the quantity of

APPLICATION 29449

-3-

water used, the purpose of use and the place of use. Please note that any water right permit issued by the SWRCB is subject to and includes conditions to protect vested water rights.

If the protest is based on environmental grounds, or other factors listed above, the protest must be accompanied by a statement of facts supporting the basis of the protest. If sufficient information is not submitted, the SWRCB may reject the protest or request that the protestant submit additional information.

A protest should be submitted on a standard protest form available from the SWRCB, but can be submitted in letter form. Protests may be submitted by FAX, but the original(s) must be submitted to the SWRCB. An informational pamphlet is available that provides additional information relating to water rights and the procedure for filing protests. Please contact the person listed below if you would like a copy of the pamphlet or protest forms. For good cause, the SWRCB may grant an extension in time to file a protest. A request for an extension of time must be submitted in a timely manner, must specify the additional time required, and state why additional time is needed to file the protest.

RESOLUTION OF PROTESTS

A copy of the protest shall be sent to the applicant. The protest shall include a description of any measures that could be taken to resolve the protest, including modification of the application (i.e., amount, season of diversion, etc.) or conditions (i.e., fish bypass flow, measuring device, etc.) that could be included in the water right permit. The protestant(s) and the applicant are encouraged to discuss methods that could be used to resolve the protest. If the protest(s) can not be resolved, the SWRCB may conduct a field investigation with all interested parties or may hold a water right hearing.

Please contact the engineer listed below if you would like to request an extension of time to file a protest.

CONTACT PERSON

To obtain additional information regarding this project, or to obtain copies of the protest forms or pamphlet, please call Yoko Mooring at (916) 657-1965.

DATE OF RENOTICE: **MAR 17 2000**

**PUBLIC RENOTICE
MAILING LIST FOR APPLICATION 29449**

Senior Engineer: LLA (YM)Date: MAR 17 2000Days: 40

App. Section (PLM)
RASwenerton
MFalkenstein

APPLICANT - (CERTIFIED)

(4 copies)

Doug Cole, et al.
92520 Highway 96
Somes Bar, CA 95568

POSTMASTER
Somes Bar, CA 95568

COUNTY: Siskiyou

1. District Attorney
2. Board of Supervisors
3. County Planning Dept.

ALL NOTICES - 20

1. Bartkewicz, Kronick & Shanahan
c/o Stephen A. Kronick
2. Buena Vista Rancheria Miwok Indian Tribe
3. California Save Our Streams Council
4. California Sportfishing Protection Alliance
c/o Robert J. Baiocchi
5. DeCuir & Somach
c/o Don Mooney
6. Department of Fish and Game
Inland Fisheries Division
c/o Deborah C. McKee
7. Downey, Brand, Seymour & Rohwer
c/o Library
8. Ellison & Schneider
c/o Wendy M. Fisher
9. Law Offices of Michael Jackson
10. Marty Lsporte
11. McCormick, Kidman & Behrnes
c/o Russell Behrnes
12. McDonough, Holland & Allen
c/o Virginia Cahill
13. Northern CA Power Agency
c/o Harri Modi
14. Pacific Gas and Electric Company
c/o Terry Morford, Hydro
15. Price, Postel & Parma
c/o C.E. Chip Wullbrandt
16. Resource Management International, Inc.
c/o Don Wagenet
17. South Delta Water Agency
c/o John Harrick
18. Trihey & Associates
c/o Jean Baldrige
19. Trout Unlimited
c/o Stan Griffin
20. California Farm Bureau Federation
c/o Brenda Johns Southwick

FEDERAL AGENCIES

- U.S. Bureau of Land Management
District Manager, Redding
- U.S. Bureau of Reclamation
- U.S. Department of Commerce
National Marine Fisheries Service
- U.S. Department of Defense
Army Corps of Engineers
San Francisco District
- U.S. Fish & Wildlife Service
Ecological Division, Sacramento
- U.S. National Forest
Klamath N.F.
- U.S. National Forest Service
c/o Sally Gregory, Region 5

STATE AGENCIES

- DEPARTMENT OF ANTHROPOLOGY
Dr. Mark Kowta, CSU, Chico
- DEPARTMENT OF BOATING AND WATERWAYS
Attn: Boating Trails Manager G-8
- DEPARTMENT OF FISH AND GAME
(w/copy of application)
Region: I, Redding
- DEPARTMENT OF FISH AND GAME (3 copies)
Chief, Environmental Services Division A-43
- DEPARTMENT OF PARKS & RECREATION
Environmental Review Section A-50
- DEPARTMENT OF WATER RESOURCES (2 copies)
Attn: John Pacheco A-36
Attn: Legal Division
- REGIONAL WATER QUALITY CONTROL BOARD
Santa Rosa, Region: 1

Others

SEE ATTACHMENT

MAR 17 2000
(renoticed)

A2 9449
Regular Mail^{WR}

OK CCA
12-23-99

ENVIRONMENTAL ADVOCATES
W 2ND & CHERRY STREETS CSUC
CHICO CA 95926-0750

LINDA HANSEN, AREA MANAGER
BLM EAGLE LAKE
2950 RIVERSIDE DRIVE
SUSANVILLE CA 96130

DEPT OF TRANSPORTATION-HYDRAULICS
PO BOX 496073
REDDING CA 96049-6073

R SELLMEN
SISKIYOU COUNTY PLANNING DEPT
PO BOX 1085
YREKA CA 96097

K DICK
DWR WATERMASTER
9106 AIRPORT ROAD
MONTAGUE CA 96064

DAVID WEBB
PO BOX 277
MT. SHASTA CA 96067

CRAIG MACKENNON
1407 WEST NORTH TEMPLE, SUITE 110
SALT LAKE CITY UT 84140

no downstream
CCA

000281



State Water Resources Control Board

SURNAME

WR-4



Winston H. Hickox
Secretary for
Environmental
Protection

Division of Water Rights
901 P Street • Sacramento, California 95814 • (916) 657-0765
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
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Division of Water Rights: <http://www.waterrights.ca.gov>

Gray Davis
Governor

In Reply Refer
to:331:YM:29449

MAR 15 2000

Mr. Wayne Virag
Assistant Planning Director
County of Siskiyou
P.O. Box 1085
Yreka, CA 96097

Dear Mr. Virag:

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

Your February 15, 2000 letter to Mr. Mike Falkenstein of this office has been referred to me for response. At your request, enclosed is a map showing the general project area. The point of diversion and the place of use have been marked in red. Both are located within Klamath National Forest land.

If you have any questions, please call me at (916) 657-1965.

Sincerely,

ORIGINAL SIGNED BY.

Yoko Mooring
Sanitary Engineering Associate
Application Unit

Enclosure

YMOORING:ym/miner:3-14-00
u:\ym\29449SISKIYOU:3/13/00

SURNAME

DWR 540 REV 2/96

ym 3/15/00

LLA
3-15-00

000282



State Water Resources Control Board

SURNAME

WR-4



Winston H. Hickox
Secretary for
Environmental
Protection

Division of Water Rights
901 P Street • Sacramento, California 95814 • (916) 657-0765
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 657-1485 • Web Site Address: <http://www.swrcb.ca.gov>
Division of Water Rights: <http://www.waterrights.ca.gov>

Gray Davis
Governor

MEMORANDUM

TO: Jane Vorpapel
Department of Fish and Game
601 Locust Street
Redding, CA 96001

FROM: Yoko Mooring
Sanitary Engineering Associate
Application Unit
Division of Water Rights

DATE: MAR 13 2000

SUBJECT: APPLICATION 29449 OF COLE, STANSHAW CREEK TRIBUTARY TO
KLAMATH RIVER IN SISKIYOU COUNTY

Pursuant to your telephone request on March 7, 2000, an extension of time until March 21, 2000 has been approved for filing a protest against the above-described application.

If you have any questions, please call me at (916) 657-1965.

cc: Doug Cole, et al.
92520 Highway 96
Somes Bar, CA 95568

YMooring:ym/tvonrotz:3-10-00
u:/ym/29449 dfg memo

SURNAME

DWR 540 REV 2/96

ym 3/13/00

LLA
3-13-00

000283



State Water Resources Control Board

SURNAME

WR-4



Winston H. Hickox
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Division of Water Rights: <http://www.waterrights.ca.gov>

Gray Davis
Governor

In Reply Refer
to:331:YM:29449

MAR 13 2000

Conrad Fisher
2016 Winchester Drive
Redding, CA 96001

Dear Mr. Fisher:

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

Pursuant to your telephone request on March 7, 2000, an extension of time until March 21, 2000
has been approved for filing a protest against the above-described application.

If you have any questions, please call me at (916) 657-1965.

Sincerely,

ORIGINAL SIGNED BY.

Yoko Mooring
Sanitary Engineering Associate
Application Unit

Enclosure (copy of Application)

cc: Doug Cole, et al.
92520 Highway 96
Somes Bar, CA 95568

YMooring:ym/tvonrotz:3-10-00
u:/ym/29449

SURNAME

DWR 540 REV 2/96

ym 3/13/00

000284

CONTACT REPORT

DIVISION OF WATER RIGHTS
STATE WATER RESOURCES CONTROL BOARD

Subject A29449

Division Personnel Yoko Mooring

Date 3/7/00 Time 10:00

Personal Where _____

Telephone Number (530) 795-2498

Individual(s)/Agency Contacted Jane Vorpagel DFG Redding office

Conversation Description Jane called to request a time extension to file a protest. She wants to visit the site first w/ DFG biologist. After the field review, she wants to develop terms to dismiss the protest. She wants 3 months to accomplish this. I told her that at this point I would give her 2 weeks to file the protest. I asked her to explain in her protest that she'd need 3 months to develop bypass flow terms. She said that would be fine

Decision(s) _____

Action Items _____

SURNAME	<u>Ym 3/7/00</u>			
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CONTACT REPORT

DIVISION OF WATER RIGHTS
STATE WATER RESOURCES CONTROL BOARD

Subject A 29449

Division Personnel Yoko Mooring

Date 3/7/00 Time 8:30

Personal Where _____

Telephone Number (530) 241-4994

Individual(s)/Agency Contacted Conrad Fisher

Conversation Description He left a message on my voice mail yesterday and I returned his call this morning. He requested a time extension to file a protest and he explained his situation as follows: Late yesterday afternoon he called DFG Redding office for something else and he discovered the project covered under A 29449. He is a downstream diverter and has a fishing lodge called Old Man River. Before he mails the protest, he wants to find out more about A 29449. He requested a copy of the application, protest form, and a time extension. I gave him 2 weeks.

Conrad Fisher
2016 Winchester Drive
Redding, CA 96001
(530) 241-4994
Fax (530) 244-0923

Decision(s) _____

Action Items Fax a copy of App 29449.

SURNAME	<u>ym 3/7/00</u>			
---------	------------------	--	--	--

A 029449

AAF
WR-4
YM



COUNTY OF SISKIYOU

Planning Department

P.O. BOX 1085 • YREKA, CALIFORNIA 96097

(530) 842-8200 • FAX (530) 842-8211

RICHARD D. BARNUM
PLANNING DIRECTOR

February 15, 2000

Mike Falkenstein
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, California 95812-2000

Dear Mr. Falkenstein:

Subject: Proposed Hydroelectric Plant for Doug Cole, et al.

We have received notice from your agency regarding a proposal by Doug Cole, et al., to establish a water diversion and operate a hydroelectric power plant off Stanshaw Creek in Siskiyou County. We offer no comment regarding the proposed water diversion; however, in order to more fully assess the project, it is necessary that the specific location of the hydro-plant be provided. The property owned by the Coles (APN: 026-290-200, -240, and -270) is within Siskiyou County jurisdiction. County zoning does not allow power generation facilities at this location. Should the facility be proposed within public land administered by the U.S. Forest Service, our office would have no jurisdiction.

In order to qualify these comments, it is necessary that the proposed specific location of the power generation facility be provided. Should said facility be located on public lands, we would offer no comment or opposition.

That you for the opportunity to comment on this proposal. Should you wish to discuss this matter further, please feel free to contact me at 842-8202.

Sincerely,

Wayne Virag
Assistant Planning Director

WV:lrf

cc: Kay Bryan, District 5 Supervisor

ROUTE SHEET - APPLICATION UNIT

Applicant Robert E. & Mary Judith Young

Application Number 29449

Staff Engineer ~~MAB~~ ~~DEW~~ KDM

- Major Filing (Over 3 cfs or 200 afa)
- Minor Filing
- AB 2440 Power Filing
- Other Power Filing

TWO DAYS MAXIMUM

1. SENIOR Rey 3-21-89 Assign to Staff Engineer; RECORD ASSIGNMENT ("New Apps" Log)

- Minimum fee received.
- Application signed and dated.
- P. O. D. has proper ties and agrees with map.
- Purpose, season and amount shown.
- Cannot accept, condor area, etc.
- Sufficiently complete to accept. If not acceptable, put fee in uncleared collections or return.
- Complete receipt tag. (stream code, quad map, coordinates, etc.)
- Plot (in pencil) on spot map.
- Draft fee letter.
- Draft AWRIS Document (AID).
- Forward to Senior.

2. STAFF ENGINEER HCS 7-24-89

3. SENIOR Om Law 3-27-89 Check and initial fee letter and AID.
 LOG OUT and hand carry to Files.

4. FILE ROOM JK 8-29-89 Assign and stamp number.
 Send copy of application and AID to Ken Beyer.
 Type fee letter and mail.
 Prepare folder and file material.

5. SENIOR KSN 4-3-89 LOG IN (Assignment/Progress Log); Note number ("New Apps" Log).
 Check plot and symbol on spot map; plot in ink; add number.
 LOG OUT to Staff Engineer.

8. PROJECT ENGINEER			<input checked="" type="checkbox"/> Make working copy & ES copy. <input type="checkbox"/> Date hand-carried copy of app to ES Prog Mgr: _____ <input type="checkbox"/> Check fee letter. <input type="checkbox"/> Initial update WRIMS. <input checked="" type="checkbox"/> Do Completion Checklist for Notice. (Form WR 4) <input checked="" type="checkbox"/> Date ES clearance received: <u>11/4/99</u> <input type="checkbox"/> Prepare deficiency letter. Letter dated: _____ <input type="checkbox"/> Record on tracking report. <input type="checkbox"/> Send copy of application to Safety of Dams. Letter dated: _____ <input type="checkbox"/> Send changes or corrections to DMU as necessary. <input checked="" type="checkbox"/> Draft Notice of Application. <input checked="" type="checkbox"/> Draft mailing list (check: file incl yellow interested party sheet, working copy for owner of POD & POU, & stream & city lists) Log out to Word Proc in Assignment/Progress log.
9. WORD PROC.	<u>11/16/99</u>	<u>ym</u>	<input checked="" type="checkbox"/> Type draft notice & mailing list.
10. PROJECT ENGINEER	<u>12/13/99</u>	<u>ym</u>	<input checked="" type="checkbox"/> Make DFG copy of application. <input checked="" type="checkbox"/> Proof notice & mailing list.
11. SENIOR OR	<u>1-6-00</u>	<u>CCD</u>	<input type="checkbox"/> Review file for completeness <input type="checkbox"/> Review Notice
12. SECRETARY	<u>1-28-00</u>	<u>dv</u>	<input checked="" type="checkbox"/> Reproduce & mail out notice (and form 6a). <input checked="" type="checkbox"/> Send copy of Appl to DFG with notice. <input checked="" type="checkbox"/> Send copy of notice to DMU-update WRIMS & tracking. <input checked="" type="checkbox"/> Make callup tag.
13. FILE UNIT			<input type="checkbox"/> File loose material. <input type="checkbox"/> Route to Project Engineer.
14. PROJECT ENGINEER			<input type="checkbox"/> Update Tracking Database <input type="checkbox"/> Hold & Process Protests. <input type="checkbox"/> Complete WR 14-0 or WR 14-01 as appropriate.

COMPLETION CHECKLIST

WR-4

KEY:

- CHECKED/OK
- DOES NOT APPLY

Application No. 29449
 Applicant _____

ITEM NUMBER ON LONG FORM (DESCRIPTION)	COMMENTS/DEFICIENCY DATES	
1. (Applicant)		<input checked="" type="checkbox"/> Does name agree with signature?
2. (Source)		<input checked="" type="checkbox"/> Check address and phone number. <input checked="" type="checkbox"/> Conform to stream code card (correct card if necessary). <input checked="" type="checkbox"/> Does source dry up at any point downstream? ^{No} When? <input checked="" type="checkbox"/> Is source in an Adjudicated or Wild & Scenic River Area? <i>O.K. on tributary stream</i> <input type="checkbox"/> Watermaster contacted for Mailing List? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3. (P.O.D.)		<input checked="" type="checkbox"/> Is 1/16 section given for point of diversion? <input checked="" type="checkbox"/> Is POD tied to a section corner or some other identifiable point in the land survey by coordinates or bearing and distance? Indicate "projected" section if applicable. <input checked="" type="checkbox"/> Is County shown? <input checked="" type="checkbox"/> U.S. Forest Service/BLM Land? Give Area Name: <u>Jones Bar</u> <input checked="" type="checkbox"/> Applicant has or can obtain access? <u>recorded easement</u>
4. (Purpose of Use, Amount & Season)		<input checked="" type="checkbox"/> Is purpose described? Cross out irrigation or domestic if NA. <input checked="" type="checkbox"/> Is amount described, properly bracketed to purpose and season, and consistent with annual acre-feet limitation? <input checked="" type="checkbox"/> Is season described? <input checked="" type="checkbox"/> For direct diversion, check for possible riparian status. <input checked="" type="checkbox"/> Is there a Board decision restricting diversion season (check schematic) and is it OK? Also check Critical Watershed Book. <input type="checkbox"/> For frost protection, are provisions of Division Chief's Memo 34B followed?
5. (Justification of Amount)	<i>see 5/4/99 memo ym</i>	<input checked="" type="checkbox"/> Is amount justified? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Show calculations on back) <input type="checkbox"/> Is Supplement 1-1 complete? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
6. (Diversion Works)		<input checked="" type="checkbox"/> For direct diversion or offstream storage, is pump, ditch or pipe described? <input type="checkbox"/> For storage, are the dam and reservoir described? <input type="checkbox"/> Does reservoir size agree with amount stored as shown in 4?
7. (Place of Use)		<input checked="" type="checkbox"/> Does applicant own place of use? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If not, is explanation adequate? (Note that "yes" on 7a does not necessarily indicate riparian use.) <input type="checkbox"/> U.S. Forest Service/BLM Land? Give Area Name: _____ <input type="checkbox"/> Are number of acres in each quarter-quarter listed and is P.O.U. delineated on map?
8. (Completion Schedule)	<i>existing project</i>	<input type="checkbox"/> Are all dates on completion schedule filled in?
9. (General)		<input checked="" type="checkbox"/> Is all of the general information filled in?
10. (Existing Water Right)		<input checked="" type="checkbox"/> Is one of the water right boxes checked? <input checked="" type="checkbox"/> If a prior right is claimed, is it described?
11. (Authorized Agent)		<input checked="" type="checkbox"/> If there is an agent, is the flex card made out in the name and address of the agent?
12. (Signature)		<input checked="" type="checkbox"/> Is the application dated and signed by a person in accordance with the Board's rules and regulations?
Miscellaneous	<i>A 29450 domestic use</i>	<input type="checkbox"/> E-Maps Required? (Safety of Dams jurisdiction or 10 surface acres for storage; over 3 cfs for direct diversion). <input checked="" type="checkbox"/> Are maps adequate? Agree with <u>working copy and notice</u> ? <input checked="" type="checkbox"/> Are there related filings? (Same project, <u>P.O.D.</u> and/or <u>P.O.U.</u>) <input checked="" type="checkbox"/> Is an Environmental Supplement included? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Is an underground supplement complete? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

WR 4 (7/83)

Signature _____

Date _____

NOTES:

- Enter initials and date adjacent to any item which is found to be deficient.
- Sign and date checklist when application is "in-form".

000289

No water usually allowed for fish enhancement

27449

~~27450~~

6-3-98

INSPECTION PHOTOS



0029 4'98

Photo 1

Stanshaw Creek POD. Diversion ditch takes off to the left, Stanshaw Creek flows to the right.

Headworks is constantly maintained and repaired with cobbles and gravel.

WR-4



000294

Photo 2

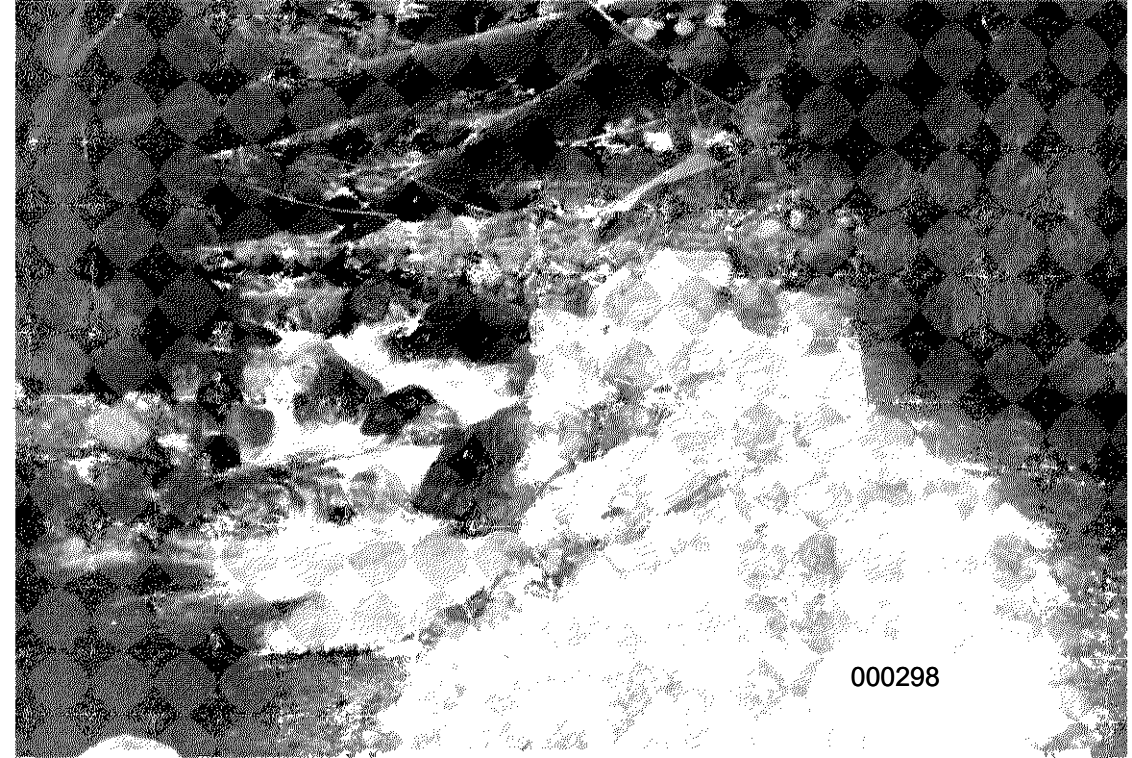
Stanshaw Creek POD Closeup. Ditch headworks shown with GS Rod (4' 10") lain across ditch. Water is approximately ½ foot in depth.

WR-4

000296

Photo 3

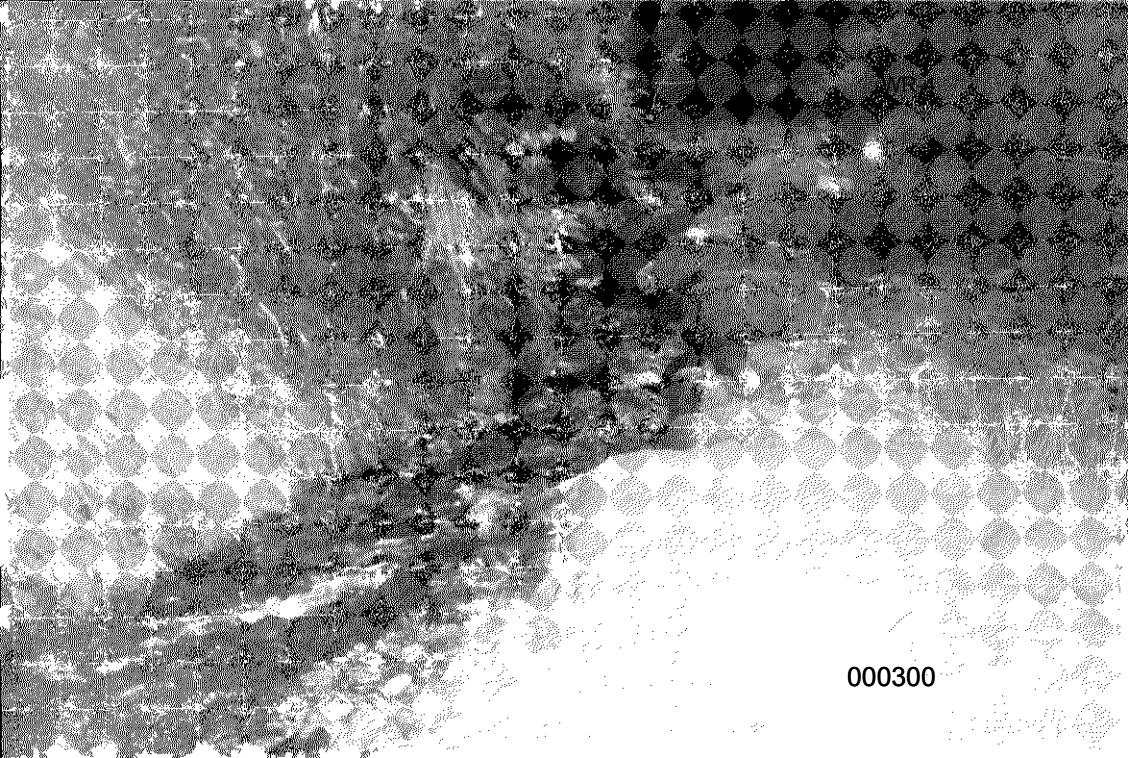
Stanshaw Creek POD showing ditch contouring the hillside to the left and Stanshaw Creek dropping down to the Klamath.



000298

Photo 4

Stanshaw Creek POD looking upstream at diversion point.



000300

Photo 5

Diversion ditch near POD.

WR-4

05/16/80

000302

Photo 6

Diversion ditch near sediment trap.

WR-4

000304

Photo 7

Diversion Ditch and flora.



000306

Photo 8

Diversion ditch where it crosses a slide. Note the structure to the right of the photo which appear to have supported a flume at one time.

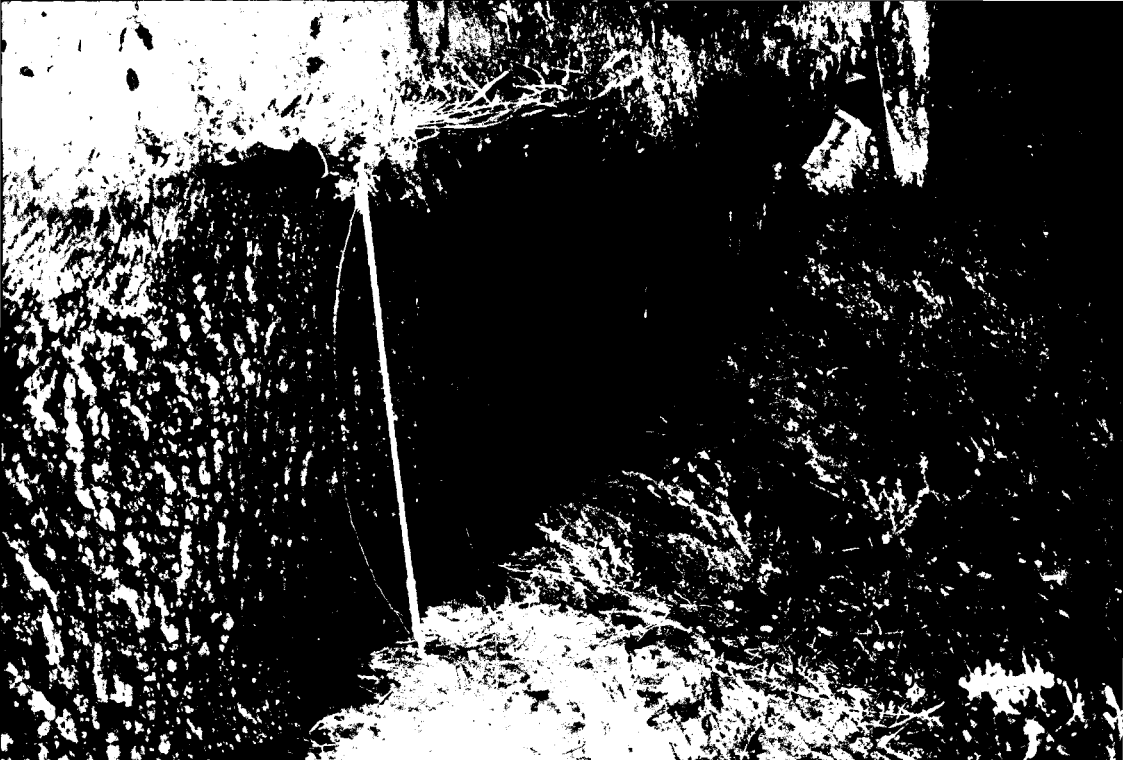


Photo 9

GS rod marks location of flow measurement. This photo is downstream of the slide, looking upstream.



WR-4

000310

Photo 10

Location of flow measurement.

6.4.9

000312

Photo 11

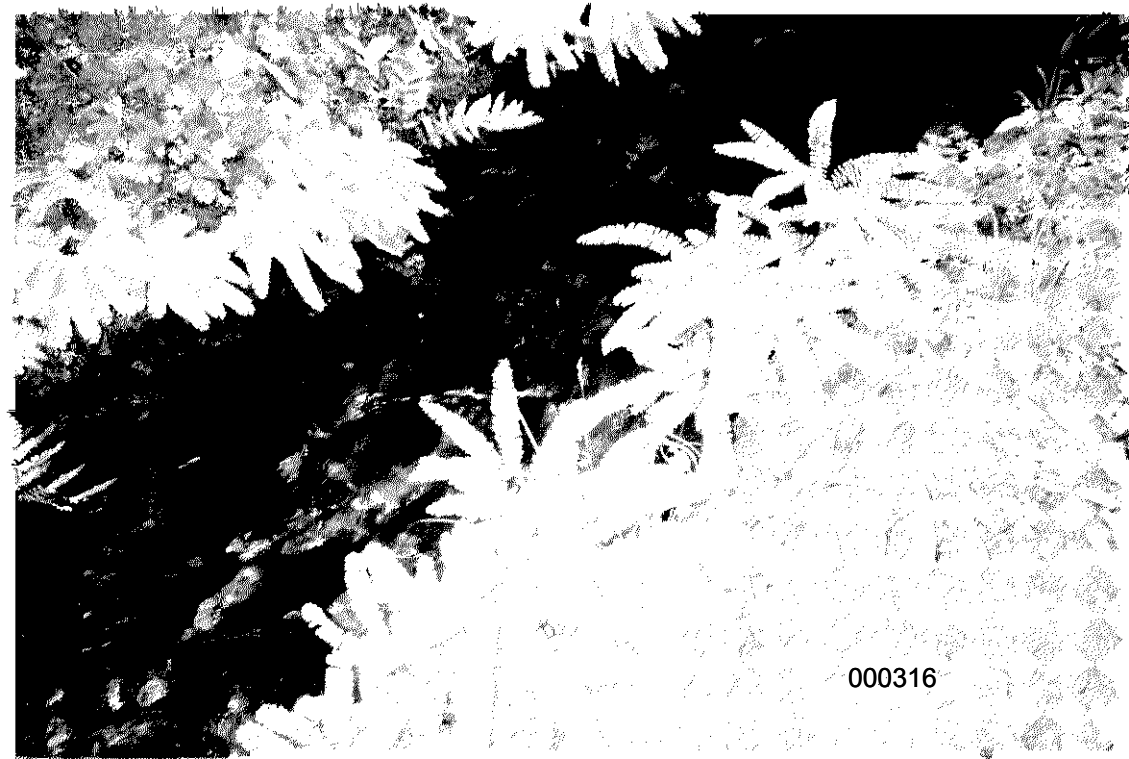
Diversion ditch.

WR-4

000314

Photo 12

Corrugated metal flume. 2 ½ feet wide at top
flowing 0.75 feet deep.



000316

Photo 13

Diversion ditch and flora.



000318

Photo 14

Diversion ditch and flora

WR-4

000320

Photo 15

Terminus of ditch. All water is diverted into the flume shown, which flows into a tank and then the penstock.



000322

Photo 16

Photo taken from the water tank looking up the flume at the terminus of the ditch. Debris screen is visible in foreground.



000324

Photo 17


Photo is taken from terminus of the ditch looking down the flume at the tank. Notice the penstock emerging from the right side of the tank. The water in the flume disappears through the leaf screen into the tank.

WR-4

000326

Photo 18

Penstock is taking all the water.



000328

88

Photo 19

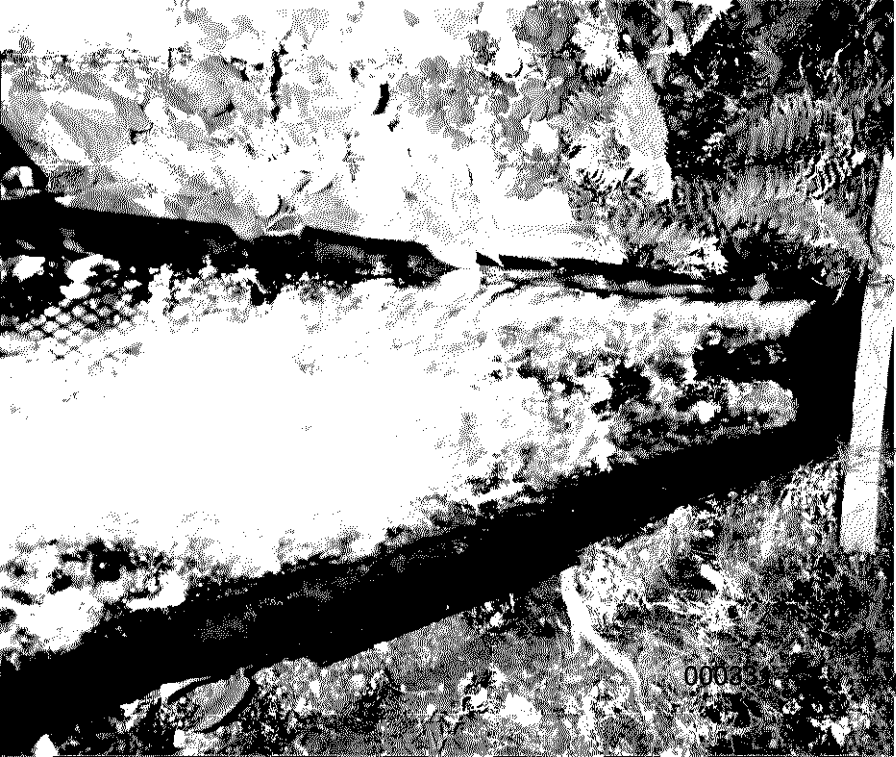
Tank is full and no excess water is bypassing the penstock.

29449
29450

WR-4

5
6-~~7~~-98 INSPECTION PHOTOS

000330



0003

Photo 16

Photo taken from the water tank looking up the flume at the terminus of the ditch. Debris screen is visible in foreground.



000333

Photo 17

Photo is taken from terminus of the ditch looking down the flume at the tank. Notice the penstock emerging from the right side of the tank. The water in the flume disappears through the leaf screen into the tank.

WR-4

000335

Photo 18

Penstock is taking all the water.



Photo 19

Tank is full and no excess water is bypassing the penstock.

9 4.88

0003

Photo 1

Stanshaw Creek POD. Diversion ditch takes off to the left, Stanshaw Creek flows to the right.

Headworks is constantly maintained and repaired with cobbles and gravel.

WR-4



000341

Photo 2

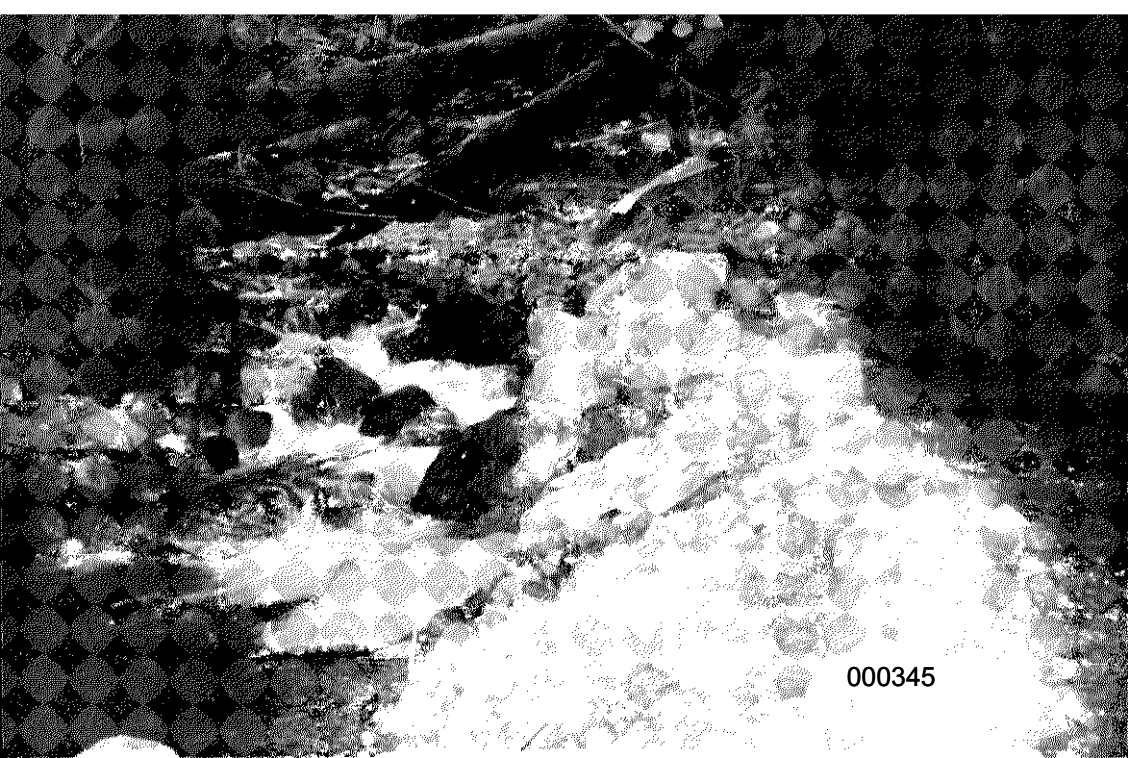
Stanshaw Creek POD Closeup. Ditch headworks shown with GS Rod (4'10") lain across ditch. Water is approximately ½ foot in depth.



000343

Photo 3

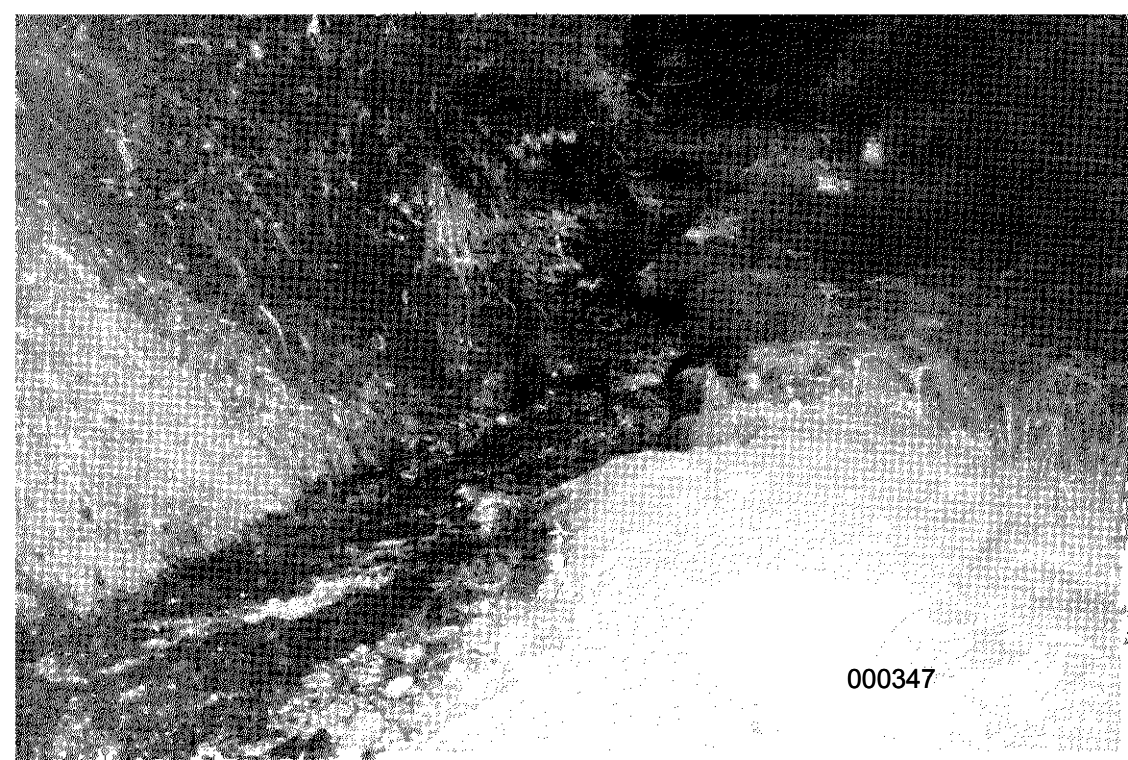
Stanshaw Creek POD showing ditch contouring the hillside to the left and Stanshaw Creek dropping down to the Klamath.



000345

Photo 4

Stanshaw Creek POD looking upstream at diversion point.



000347

Photo 5

Diversion ditch near POD.

WR-4

000349

Photo 6

Diversion ditch near sediment trap.



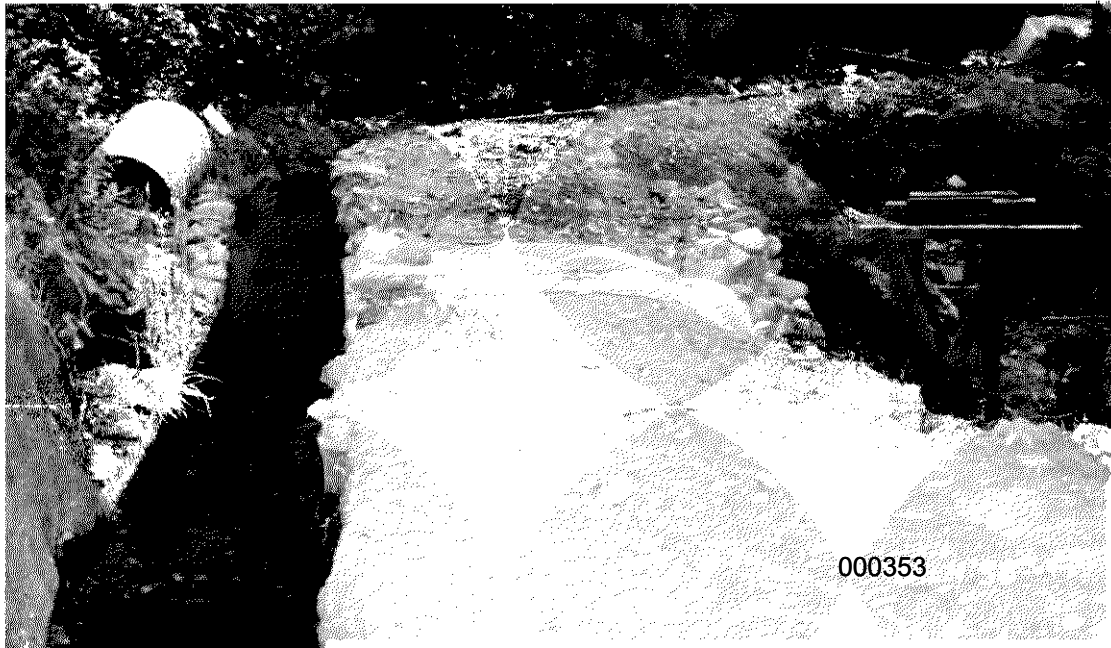
WR-4

000351

Photo 7

Diversion Ditch and flora.

WR-4



000353

Photo 8

Diversion ditch where it crosses a slide. Note the structure to the right of the photo which appear to have supported a flume at one time.



WR-4

000355

Photo 9

GS rod marks location of flow measurement. This photo is downstream of the slide, looking upstream.

WR-4

000357

Photo 10

Location of flow measurement.



6 4'98

Photo 11

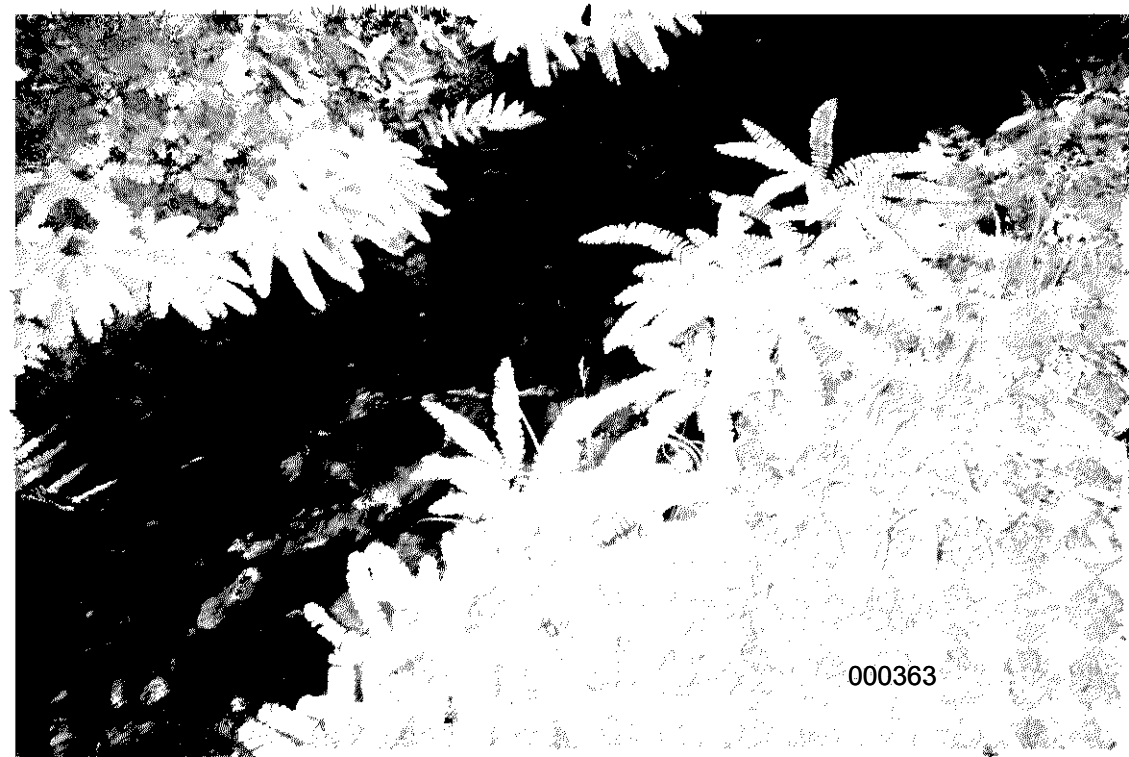
Diversion ditch.

WR-4

00036

Photo 12

Corrugated metal flume. 2 ½ feet wide at top
flowing 0.75 feet deep.



000363

Photo 13

Diversion ditch and flora.



000365

Photo 14

Diversion ditch and flora

WR-4

000367

Photo 15

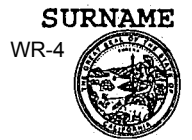
Terminus of ditch. All water is diverted into the flume shown, which flows into a tank and then the penstock.



State Water Resources Control Board

Winston H. Hickox
*Secretary for
Environmental
Protection*

Division of Water Rights
901 P Street • Sacramento, California 95814 • (916) 657-0765
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 657-1485 • Web Site Address: <http://www.swrcb.ca.gov>
Division of Water Rights: <http://www.waterrights.ca.gov>



Gray Davis
Governor

January 28, 2000

NOTICE TO POSTMASTER

APPLICATION 29449

The enclosed notice is of interest to people of your community.

We would appreciate your posting it in a prominent place in your post office.

HARRY M. SCHUELLER, Chief
Division of Water Rights

Enclosure



State Water Resources Control Board

SURNAME
WR-4



Winston H. Hickox
Secretary for
Environmental
Protection

Division of Water Rights
901 P Street • Sacramento, California 95814 • (916) 657-2170
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 657-1485 • Web Site Address: <http://www.swrcb.ca.gov>
Division of Water Rights: <http://www.waterrights.ca.gov>

Gray Davis
Governor

January 28, 2000

INSTRUCTIONS TO APPLICANT

APPLICATION 29449

Your application(s) has been determined to be complete in accordance with Section 65943, Division 1, Title 7 of the California Government Code. Please note that you are not authorized to divert or develop the use of the water covered by this application(s) until a permit has been issued for the project.

The California Water Code requires that all water right applications be noticed to the public. To accomplish this, you must do the following:

1. Post notices of your application(s) as soon as possible in two conspicuous locations near your project. Copies of the notice are included for this purpose. **THESE NOTICES MUST BE POSTED BY FEBRUARY 17, 2000.**
2. The person who posts the notice must complete the attached form entitled "Statement of Proof of Posting". **THE PROOF OF POSTING MUST BE FILED WITH THIS OFFICE BY MARCH 8, 2000.** Do not detach the copy of the notice from the statement of posting.

The State Water Resources Control Board may cancel your application(s) if you fail to mail a copy of the Statement of Proof of Posting prior to the required date.

Water right notices are designed for the mutual protection of the applicant and other parties claiming prior rights. Although vested rights to the use of water from the source from which an appropriation is sought cannot be lost, prejudiced, or impaired by failure to protest an application, known claimants to prior rights have been given this notice so that they may protest if they believe the proposed appropriation(s) will result in injury to them.

All parties filing a protest against this application(s) should furnish you, as well as this office, a copy of their protest. We will then notify you which protests are accepted and provide instructions for answering them.

HARRY M. SCHUELLER, Chief
Division of Water Rights

Enclosures

CERTIFIED



State Water Resources Control Board

WR-4



Winston H. Hickox
Secretary for
Environmental
Protection

Division of Water Rights
901 P Street • Sacramento, California 95814 • (916) 657-0765
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 657-1485 • Web Site Address: <http://www.swrcb.ca.gov>
Division of Water Rights: <http://www.waterrights.ca.gov>

Gray Davis
Governor

NOTICE OF APPLICATION TO APPROPRIATE WATER

APPLICATION 29449

DATE FILED March 27, 1989

Notice is hereby given that Doug Dole, Heidi Cole, Norman D. Cole, and Caroline Cole have filed an application for a water right permit for diversion of water from Stanshaw Creek tributary to Klamath River in Siskiyou county. The State Water Resources Control Board (SWRCB) will determine whether a water right permit should be issued for the application and, if so, whether conditions should be included in the permit to protect the environment and other downstream water users. This notice provides a description of the proposed project and also describes the procedure and time frame for submittal of a protest against the application. This notice and future notices of Applications to Appropriate Water by Permit, may be viewed and printed at the Division of Water Rights web site www.waterrights.ca.gov. Any correspondence to the applicant shall be mailed to:

Doug Cole, et al.
92520 Highway 96
Somes Bar, CA 95568

DESCRIPTION OF THE PROJECT

The applicant seeks a right to directly divert 3 cubic feet per second from Stanshaw Creek for hydroelectric power generation via flume of 12-inch deep, 24-inch wide, and 5,200 feet long, then through penstock of 16-inch diameter, 455 feet long steel pipe. The penstock is utilizing 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 works is 56.8. After use, the water will be returned to Irving Creek through the ditch, thence the Klamath River.

The project is located approximately 6 miles north of Somes Bar and 2½ miles west of Marble Mountain Wilderness.

APPLICATION INFORMATION

The applicant proposes to divert water from Stanshaw Creek tributary to Klamath River. The Point of Diversion is located within the projected Section 33, T13N, R6E, HB&M. The Place of Use is at the powerhouse within the projected Section 33, T13N, R6E, HB&M. The diversion and place of use are located within the County of Siskiyou. The discharge will be returned to Irving Creek in projected Section 4 T12N, R6E, HB&M.

APPLICATION 29449

Amount of water applied for: 3.0 cfs (Direct Diversion), not to exceed a total of 2,168.1 AFA.
Water will be used for: Hydroelectric.

The applicant has requested to divert water from: January 1 to December 31.

ENVIRONMENTAL INFORMATION

Based on a preliminary review of information provided by the applicant, the project may have a potential for causing a significant effect on the environment. If you have information which indicates that the project will cause a significant effect on the environment, please send this information immediately to:

Mr. Mike Falkenstein,
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000 Sacramento, CA 95812-2000.

This information will be reviewed in accordance with CEQA.

PROCEDURE FOR SUBMITTING PROTESTS

Any person may file a protest against the application. The protest must be submitted in writing to the SWRCB and to the applicant within **40 days** of the date of this notice. Parties may file protests based on any of the following factors:

- . Injury to existing water rights.
- . Adverse environmental impact.
- . Not in the public interest.
- . Contrary to law.
- . Not within the jurisdiction of the SWRCB.

All protests must clearly describe the objections to approval of the application and the factual basis for those objections. If the objection is based on injury to existing water rights, the protest must describe the specific injury to the existing water right that would result from approval of the application. In addition, the party claiming injury to prior water rights must provide specific information that describes the basis of the existing right, the date the use began, the quantity of water used, the purpose of use and the place of use. Please note that any water right permit issued by the SWRCB is subject to and includes conditions to protect vested water rights.

If the protest is based on environmental grounds, or other factors listed above, the protest must be accompanied by a statement of facts supporting the basis of the protest. If sufficient information is not submitted, the SWRCB may reject the protest or request that the protestant submit additional information.

APPLICATION 29449

A protest should be submitted on a standard protest form available from the SWRCB, but can be submitted in letter form. Protests may be submitted by FAX, but the original(s) must be submitted to the SWRCB. An informational pamphlet is available that provides additional information relating to water rights and the procedure for filing protests. Please contact the person listed below if you would like a copy of the pamphlet or protest forms. For good cause, the SWRCB may grant an extension in time to file a protest. A request for an extension of time must be submitted in a timely manner, must specify the additional time required, and state why additional time is needed to file the protest.

RESOLUTION OF PROTESTS

A copy of the protest shall be sent to the applicant. The protest shall include a description of any measures that could be taken to resolve the protest, including modification of the application (i.e., amount, season of diversion, etc.) or conditions (i.e., fish bypass flow, measuring device, etc.) that could be included in the water right permit. The protestant(s) and the applicant are encouraged to discuss methods that could be used to resolve the protest. If the protest(s) can not be resolved, the SWRCB may conduct a field investigation with all interested parties or may hold a water right hearing.

Please contact the engineer listed below if you would like to request an extension of time to file a protest.

CONTACT PERSON

To obtain additional information regarding this project, or to obtain copies of the protest forms or pamphlet, please call Yoko Mooring at (916) 657-1965.

DATE OF NOTICE: **JAN 28 2000**

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. Addressee's Address
2. Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Doug Cole

4a. Article Number

487055

4b. Service Type

- | | |
|---|------------------------------------|
| <input type="checkbox"/> Registered | <input type="checkbox"/> Certified |
| <input type="checkbox"/> Express Mail | <input type="checkbox"/> Insured |
| <input type="checkbox"/> Return Receipt for Merchandise | <input type="checkbox"/> COD |

7. Date of Delivery

2-7-00

5. Received By: (Print Name)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Addressee or Agent)

000374

X

[Handwritten Signature]

Thank you for using Return Receipt Service.

29449

cole

ym

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

000375

PUBLIC NOTICE
MAILING LIST FOR APPLICATION 29449

Senior Engineer: LLA (YM) Date: JAN 28 2000 Days: 40

App. Section (PLM)
RASwenerton
MFalkenstein

20. California Farm Bureau Federation
c/o Brenda Johns Southwick

FEDERAL AGENCIES

-U.S. Bureau of Land Management
District Manager, Redding

-U.S. Bureau of Reclamation

-U.S. Department of Commerce
National Marine Fisheries Service

-U.S. Department of Defense
Army Corps of Engineers
San Francisco District 40

-U.S. Fish & Wildlife Service
Ecological Division; Sacramento

-U.S. National Forest
Klamath N.F.

-U.S. National Forest Service
c/o Sally Gregory, Region 5

STATE AGENCIES

-DEPARTMENT OF ANTHROPOLOGY
Dr. Mark Kowta, CSU, Chico

-DEPARTMENT OF BOATING AND WATERWAYS
Attn: Boating Trails Manager G-8

-DEPARTMENT OF FISH AND GAME
(w/copy of application)
Region: I, Redding

-DEPARTMENT OF FISH AND GAME (3 copies)
Chief, Environmental Services Division A-43

-DEPARTMENT OF PARKS & RECREATION
Environmental Review Section A-50

-DEPARTMENT OF WATER RESOURCES (2 copies)
Attn: John Pacheco
Attn: Legal Division A-36

-REGIONAL WATER QUALITY CONTROL BOARD
Santa Rosa, Region: 1

APPLICANT - (CERTIFIED) (4 copies)

Doug Cole, et al.
92520 Highway 96
Somes Bar, CA 95568 9 487055

POSTMASTER
Somes Bar, CA 95568 10

COUNTY: Siskiyou
1. District Attorney
2. Board of Supervisors 13
3. County Planning Dept.

ALL NOTICES - 20 33

1. Bartkiewicz, Kronick & Shanahan
c/o Stephen A. Kronick
2. Buena Vista Rancheria Miwok Indian Tribe
3. California Save Our Streams Council
4. California Sportfishing Protection Alliance
c/o Robert J. Baiocchi
5. DeCuir & Somach
c/o Don Mooney
6. Department of Fish and Game
Inland Fisheries Division
c/o Deborah C. McKee
7. Downey, Brand, Seymour & Rohwer
c/o Library
8. Ellison & Schneider
c/o Wendy M. Fisher
9. Law Offices of Michael Jackson
10. Marty Lsporte
11. McCormick, Kidman & Behrnes
c/o Russell Behrnes
12. McDonough, Holland & Allen
c/o Virginia Cahill
13. Northern CA Power Agency
c/o Harri Modi
14. Pacific Gas and Electric Company
c/o Terry Morford, Hydro
15. Price, Postel & Parma
c/o C.E. Chip Wullbrandt
16. Resource Management International, Inc.
c/o Don Wagenet
17. South Delta Water Agency
c/o John Harrick
18. Trihey & Associates
c/o Jean Baldrige
19. Trout Unlimited
c/o Stan Griffin

50

Owner of POD other than Applicant
None

JAN 28 2000

Listed Diverters downstream of Applicant
See Attachment
CERTIFIED OR REGULAR MAIL

JAN 28 2000

A29449
WR-4
Regular Mail

OK CCA
12-23-99

ENVIRONMENTAL ADVOCATES
W 2ND & CHERRY STREETS CSUC
CHICO CA 95926-0750

LINDA HANSEN, AREA MANAGER
BLM EAGLE LAKE
2950 RIVERSIDE DRIVE
SUSANVILLE CA 96130

DEPT OF TRANSPORTATION-HYDRAULICS
PO BOX 496073
REDDING CA 96049-6073

R SELLMEN
SISKIYOU COUNTY PLANNING DEPT
PO BOX 1085
YREKA CA 96097

K DICK
DWR WATERMASTER
9106 AIRPORT ROAD
MONTAGUE CA 96064

DAVID WEBB
PO BOX 277
MT. SHASTA CA 96067

CRAIG MACKENNON
1407 WEST NORTH TEMPLE, SUITE 110
SALT LAKE CITY UT 84140

no downstream
CCA
000378

5

State Water Resources Control Board

WR-4

901 P Street • Sacramento, California 95814 • (916) 657-2170
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 657-1485 • Web Site Address: <http://www.swrcb.ca.gov>

Winston H. Hickox
Secretary for
Environmental
Protection

Gray Davis
Governor

MEMORANDUM

TO: FILES, APPLICATION 29449

FROM: 
Yoko Mooring
Application Unit

DATE: November 15, 1999

SUBJECT: PROJECTION

For notice and permit writing, I recommend using only California Coordinate System for identifying the point of diversion and place of use, and not including $\frac{1}{4}$ $\frac{1}{4}$ entries. The project is located in the Klamath National Forest land, near Marble Mountain Wilderness. The USGS maps show no section, township, and range lines for over 30 miles in the area. It is extremely difficult to project the section and $\frac{1}{4}$ $\frac{1}{4}$. Three maps in the file show projection; however, all of them show different $\frac{1}{4}$ $\frac{1}{4}$ for POD. Therefore, I recommend using only CA Coordinate tie.

000379

CONTACT REPORT

DIVISION OF WATER RIGHTS
STATE WATER RESOURCES CONTROL BOARD

Subject A29449

Division Personnel Yoko Mooring

Date 11/8/99 Time 11:30

Personal Where _____

Telephone Number _____

Individual(s)/Agency Contacted Kathy Mrowka

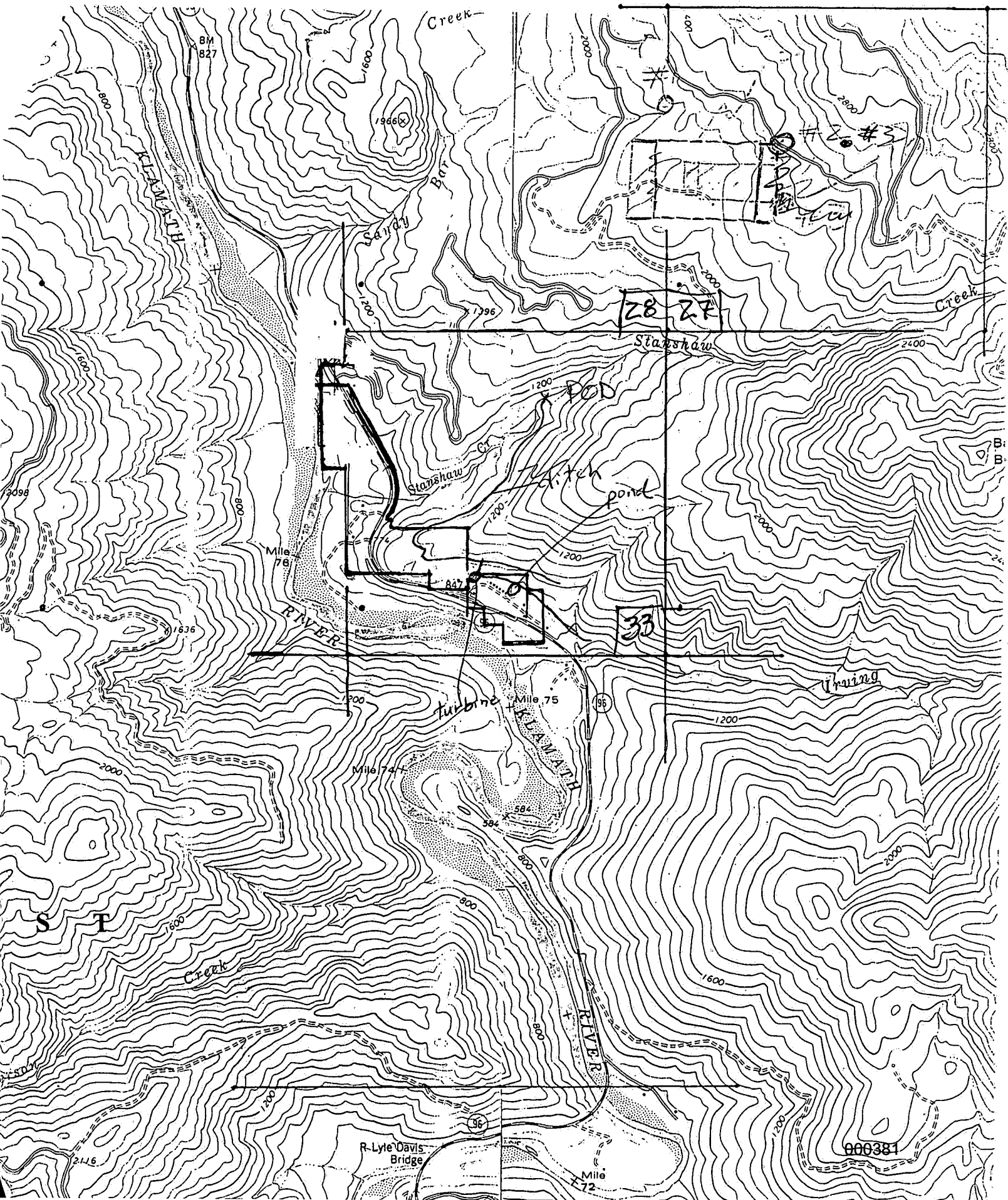
Conversation Description The purpose of use for A29449 is strictly power generation. Fish enhancement, domestic and irrigation have been deleted from this application. I consulted Katy Mrowka regarding POU for power. She said that the location of turbine would be POU because that would be a place generates power.

p.m. 11/10/99 I talked to Chris Murray who inspected the site. He marked turbine location on the attached map.

Decision(s) _____

Action Items _____

SURNAME	<u>Ym 11/8/99</u>			
---------	-------------------	--	--	--



Received from MF
on 11/4/99 ^{WR-4} jm.
(5/87)

29449 +

APPLICATION _____

Lead Agency 1

According to the California Environmental Quality Act (CEQA) and its guidelines, _____ is the lead agency and will be responsible for preparation of appropriate environmental documents for the project and for determining whether or not the project will cause a significant effect on the environment. If you have any information which indicates that the project will have a significant effect on the environment, please send this information to the lead agency immediately and also send a copy to Mr. Ross Swenerton, State Water Resources Control Board, Division of Water Rights, P.O. Box 2000, Sacramento, CA 95810. This information will be reviewed in accordance with CEQA.

Lead Agency 2

The State Water Resources Control Board has been informed that _____ is the lead agency, pursuant to the California Environmental Quality Act (CEQA), and has prepared _____. If you have information not covered in the lead agency's environmental document which indicates that the project will have a significant effect on the environment, please send this information immediately to Mr. Ross Swenerton, State Water Resources Control Board, Division of Water Rights, P.O. Box 2000, Sacramento, CA 95810. This information will be reviewed in accordance with CEQA.

Exempt

Based on a preliminary review of information provided by the applicant, the project does not appear to have the potential for causing a significant effect on the environment, and the State Water Resources Control Board staff proposes to exempt the project from the California Environmental Quality Act (CEQA). If you have information which indicates that the project should not be exempt from CEQA, please send this information to Mr. Ross Swenerton, State Water Resources Control Board, Division of Water Rights, P.O. Box 2000, Sacramento, CA 95810.

Nonexempt

Based on a preliminary review of information provided by the applicant, the project may have a potential for causing a significant effect on the environment. If you have information which indicates that the project will have a significant effect on the environment, please send this information immediately to Mr. Ross Swenerton, State Water Resources Control Board, Division of Water Rights, P.O. Box 2000, Sacramento CA 95810. This information will be reviewed in accordance with the California Environmental Quality Act (CEQA).

MIKE FALKENSTEIN

Contact Report

Person Contacted: Sean Bagheban Date: 7-22-99

Phone Number:

(He/She/We) Called Returned Call In Person

Division Staff: Chris Murray

DMG

Subject: 29449 and 29450 of Cole--Siskiyou County

Notes: Mr Bagheban called to let me know that he had received the cancellation order for 29450, but that he is no longer the agent for the Coles. He requested that we send the Coles a copy of the order. I suggested that he send the Coles his copy and Mr. Bagheban agreed to do so. He stated that his name should be removed from all of the Coles filings including the Small Domestic filing. He did not have the number handy at the time. I stated that I would make the necessary changes.

S-15022
X-2837



Cal/EPA

MEMORANDUM



Gray Davis
Governor

State Water
Resources
Control Board

TO: Files 29449 and X002837

901 P Street
Sacramento, CA
95814
(916) 657-
FAX (916) 657-1485

FROM: Christopher O. Murray
WRC Engineer
Application and Petition Unit #2
DIVISION OF WATER RIGHTS

DATE: 5-4-99

SUBJECT: SITE VISIT TO COLE'S PLACE

Chuck Rich and I visited the project site to determine the best course of action for the Division relative to the current filings. The applicants previously submitted a Small Domestic Registration for a small pond which was recently constructed on their property. The Coles also have two previous filings which the Division has yet to act upon, one for domestic and irrigation direct diversion and one for hydro power direct diversion.

The applicants claim pre-14 rights for the water diverted but cannot show that the right has been in continuous use in the amounts currently diverted through the Pelton wheel. Consequently, the Applicants have requested that the irrigation and domestic use filing be withdrawn (A029450). There was some question as to whether the Applicants own another reservoir which showed up on an aerial photo submitted by the Department of fish and Game. This other reservoir is larger in size than the one the Coles filed for in their recent SDR X002837. There was some speculation that if the Coles do own that reservoir, then the direct diversion under 29450 could be converted to storage to cover the reservoir.

After arriving on site, we were informed that the larger reservoir is not part of the Cole's property. Consequently, it would appear that there is no need for 29450 and it can be cancelled. The SDR should be accepted as filed.

We surveyed the reservoir on the Cole property and found that it is a maximum of three acre-feet in size. It was not full at the time of the survey and did not appear to be capable of filling completely due to seepage losses. Construction on the reservoir is ongoing and the filing was for 10 acre-feet. Consequently, I would recommend that the right be processed for ten acre-feet.

A flow measurement of the canal indicated a flow rate of 2.75 cfs diverted from Stanshaw Creek. This amount of water was more than could be forced through the penstock as some was spilling out

onto the ground at the inlet to the penstock. The penstock appears to remain full at approximately 2.4 cfs. The applicant applied for three cfs, I would recommend processing the application for that amount as there are plans to repair the penstock at a later time.

According to Mr. Squires, the Department of Fish and Game has been out on site and did not see a need for fish screening on the diversion ditch. This is probably due to the low velocities (approximately 1 foot/sec) and the fact that the ditch does provide some habitat for juvenile salmonids. Mr. Squires stated that they were entering into an agreement with DFG and that he would send me a copy of the agreement once it was finalized.

Sean Bagheban
Aqua Engineering & Design
P.O. Box 160621
Sacramento, CA 95816

WR-4

fil

Dec. 1, 1998

Dear Mr. Murray,

This letter is an official request for cancellation of application A29450. Per your request and recommendations of SWRCB staff in the letter dated Sep. 15, 1998, we are filing a statement of water diversion & use based on my clients' pre-1914 rights.

Sincerely,

Sean Bagheban

STATE WATER RESOURCES

STATE OF CALIFORNIA
 STATE WATER RESOURCES CONTROL BOARD
 DIVISION OF WATER RIGHTS
 STATEMENT OF WATER DIVERSION AND USE

98 DEC -1 AM 11: 27

(This is not a Water Right)

DIV. OF WATER RIGHTS
 SACRAMENTO

This statement should be typewritten or legibly written in ink.

- A. Name of person diverting water Douglas T. Cole (Marble Mountain Ranch)
 Address 92520 Highway 96
Somes Bar, CA 95568 Telephone: (530) 469-3437
- B. Water is used under: — Riparian claim; Pre 1914 right; — Other (explain)
- C. Name of body of water at point of diversion Stanshaw Creek
 Tributary to Klamath River, thence Pacific Ocean
- D. Place of diversion SW ¼ NE ¼ Section 33, Township 13N, Range 6E, H B&M, Siskiyou County, and locate it on a print from a U.S.G.S. quad sheet or make a sketch on the section grid on the reverse side with regard to section lines and prominent local landmarks. Name of works Marble Mountain Ranch
- E. Do you own the land at the point of diversion? YES NO
- F. Capacity of diversion works 2.5 (cfs or gpm) Capacity of storage reservoir — (gallons or acre-feet)
 Type of diversion facility: Gravity , Pump —
 Method of measurement: Weir —, Flume , Electric Meter —, Water Meter —, Estimate —
- G. State quantity of water used each month in ~~gallons~~ or acre-feet

Year	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
	29.5	29.5	29.5	29.5	24.5	29.5	29.5	29.5	29.5	29.5	29.5	29.5	354.

If monthly and annual use are not known, check months in which water was used. State extent of use in units, such as acres of each crop irrigated, average number of persons served, number of stock watered, etc.

Total annual amount is based on 0.49 cfs.

- H. Annual water use in recent years: Maximum — Minimum — (gallons or acre-feet)
- I. Purpose of use (what water is being used for) Irrigation, recreation, domestic
- J. General description or location of place of use (use sketch of section grid on reverse if you desire) See sketch
- K. Year of first use as nearly as known —
- L. Name of person filing statement Sean Bagheban, P.E.
 Position: Agent/Consultant for Mr. Cole
 Address: P.O. Box 160621, Sacramento, CA 95816

I declare under penalty of perjury that the above is true and correct to the best of my knowledge and belief.

Dated: Nov. 27, 19 98, at Sacramento, California

Signature: Sean Bagheban

CM
29449
29450

November 25, 1998

Mr. Chris Murray
State Water Resources Control Board
Division of Water Rights
901 P Street
Sacramento, CA 95814

Subject: 332:CM:29449,29450

Dear Mr. Murray:

This letter is to inform you that I will be representing Mr. Douglas Cole concerning water rights for the Marble Mountain Ranch. Mr. Cole has retained my services and notified the State Water Resources Control Board (Board) in his November 18, 1998 letter. My clients and I are committed to working diligently with the Board staff to reach an equitable solution.

Also, per our telephone conversations on November 17 and 25, 1998, and considering the letter from the Board to my clients, dated September 15, 1998, I am taking the actions that are outlined below.

- Filing a Registration of Small Domestic Use Appropriation;
- Filing a Request for Cancellation of Application 29450, and a Statement of Water Diversion and Use;
- Working closely with Board staff to modify and process application 29449.

I would like to thank you in advance for your professional cooperation and understanding. Please do not hesitate to contact me if you have any questions or concerns. I can be reached by telephone at (916) 612-3539.

Sincerely,



SEAN BAGHEBAN, P.E.

cc: Mr. Douglas Cole
92520 Highway 96
Somes Bar, CA 95568

Mr. Ron Prestly
Department of Fish and Game
Environmental Services
601 Locust Street
Redding, CA 96001

CMA

~~29449~~

November 18, 1998

~~29450~~

State of California
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, California 95812-2000
Attn.: Chris Murray

Dear Sirs:

This is to notify your office that I have retained the services of Mr. Sean Bagheban, P.E., civil engineer, to handle the ongoing water rights case which we have had with you as it relates to appropriated water supplying the Marble Mountain Ranch. All future correspondence regarding this case should therefor be directed to the office of Mr. Bagheban at P.O. Box 160621, Sacramento, Calif., 95816.

I appreciate your willingness to work with our representative in achieving a satisfactory solution to this matter.

Sincerely yours,

Douglas T. Cole

Douglas T. Cole, owner
Marble Mountain Ranch
92520 Hwy 96
Somes Bar, Calif. 95568
(530) 469-3437

Contact Report

Person Contacted: Sean Bagheban Date:11-17-98

Phone Number: 445-8340

(He/She/We) Called Returned Call In Person

Division Staff: Chris Murray

Subject: APPLICATIONS 29449 AND 29450 OF DOUG AND HEIDI COLE

Notes: Sean called to let me know that he will be representing the Coles with regard to this application. He requested that I give him some background information relating to these filings. I broprught him up to date with the filings and explained the need for them and described the information we have which suggests the pre-1914 claim is limited to about .5 cfs at the most.

I further explained that the Division is willing to cancel application 29450 and mover toward processing application 29449. I also mentioned that the Coles will need a water right for the pond which has been constructed upon the property. Sean asked if a Small Domestic Registration would be appropriate for that reservoir and I stated that if all of the requirements are met, then we would accept an SDR for the reservoir.

I mentioned to Sean that the November 30 deadline, outlined in Mr Scheuller's Se[ptember 15 letter, is still in effect. Sean said he would get back with me next week to discuss in more detail.

CSA
WRA 25446
29449
29450
E-mail: 75244,2246@compuserve.com

THE LAW OFFICES OF NANCY SMITH

A Professional Law Corporation

4821 Lankershim Boulevard, Suite F 212
West Toluca Lake, California 91602
Telephone (626) 585-9907
Facsimile (818) 763-6775

Nancy Smith
Yolanda G. Butler, Legal Assistant

November 16, 1998

VIA FAX (916) 657-1485

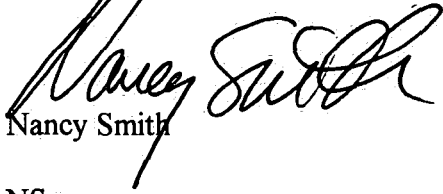
Christopher O. Murray, WRC Engineer
Applications and Petition Unit #2
Cal/EPA
P.O. Box 2000
Sacramento, CA 95812-2000

**RE: MARBLE MOUNTAIN RANCH (Water Rights)
APPLICATIONS 25446, 29449 AND 29450**

Dear Mr. Murray:

Please be advised that my office no longer represents Marble Mountain Ranch in the above-captioned matters. You and the Board may contact Doug Cole directly. I have advised Mr. Cole of the November 30, 1998 deadline for responding to the Board's September 15, 1998.

Very Truly Yours,
THE LAW OFFICES OF NANCY SMITH


Nancy Smith

NS:yo

cc: Doug Cole
murray.006

W. S. Murray
State Water Resources Board
Division Of Water Rights
P.O. Box 2000
Sacramento, Calif. 95812-2000

November 5, 1998

~~CM~~
WR-4
29449
29450

Dear Mr. Murray:

I have been ask by my daughter and son-in-law, Heidi and Doug Cole, to assist in the resolution of the water rights issue pertaining to their Marble Mountain Ranch in western Siskyou County. They are currently struggling with preparations for an IRS audit and both are working practically around the clock to provide for the basic needs of their young family. Two nights ago, Doug provided me with a stack of letters which have come to him from your Division office and from his attorney, Nancy Smith, over the past year or so. In digesting this material, I have begun to be a little educated about water rights , about the apparently extensive communication which has gone on between you and Nancy, and about an upcoming deadline of November 30, 1998 for getting this matter resolved.

I believe you and I met on one of your visits to the Ranch and, although I feel quite comfortable speaking with you directly, I decided to write to you so that I might more thoroughly present my questions and concerns regarding the water rights issue as well as provide information and observations which I feel should be considered in the final resolution of the matter. It is my hope that after you have had an opportunity to look over what I have written here we can meet again somewhere to further discuss and finalize details. I trust that you are anxious to get an early settlement to this issue and so I am prepared to work with you in any way necessary to expedite matters.

In a letter from Nancy Smith to Doug, dated October 7, 1997, Ms. Smith stated, "If you [Doug] proceed by way of permit, the State is prepared to give you a permit for 3 cfs." Assuming this option is still open to him, I am certain that Doug would now agree to accept this flow rate as long as he has assurance that his future right to divert water from Stanshaw Creek (irrespective of flow rate), as set forth in the pre-1914 grant signed by President Taft, will not be compromised.

Yesterday, I measured the flow rate in an eighteen-foot section of half-culvert which is a part of the canal carrying water to the Ranch. The inside diameter of this culvert is 29 inches. A small piece of cork was dropped into the center of the stream and it took 15 seconds for it to traverse the 18 feet of culvert. This latter velocity measurement was confirmed by repeated trials. From these measurements, I calculated the flow rate to be 2.75 cfs. Since this flow rate is just slightly in excess of what is necessary for the operation of our hydroelectric plant, I am perplexed over the variety of much lower, past estimates quoted in the various reports and letters available to me. I believe there is sufficient evidence to show that the carrying capacity of the canal has not been altered since its construction in the 1800's. A flow rate of at least 2.75 would have been necessary to support an intensive hydraulic mining operation and, later, to support the documented multiplicity of uses for water delivered to the Ranch, including the irrigation of pasturage supporting 100 head of cattle (as attested to by a former owner, Lue Hayes). I find it preposterous that the State would expect us to come up with numerical data to validate water flow rates during a period of time when such rates were not actually measured and, indeed, when there existed no water rights laws to cause concern to anyone.

Perhaps you would agree that many laws, including those pertaining to water rights, were and are written and passed without sufficient attention to or provision for special circumstances. I believe there is a very special circumstance, directly relating to the current issue of water rights for the Ranch, but which seems not to have entered into any of the documents I have read. The special circumstance I allude to is that neither electric power nor potable water has been made available to the Ranch by any public utilities company and therefor we are totally dependent upon an adequate flow of water in the Stanshaw canal for our basic living requirements. Should any agency impose a reduction of our current water flow, which flow by all accounts of former owners and residents has not changed significantly for well over one hundred years, our resident families would be uprooted, our sole source of income wiped out, and a tremendous (if not total) loss of financial resources essential to our future sustenance be incurred. Such action on the part of a government agency would, in my estimation, not only fail to meet the test of reasonableness, but would seem to violate our constitutional rights relating to our pursuit of life and happiness.

It is clear to me that inherent in the establishment of State water rights laws is a concern for providing adequate water for possible future users downstream. In our circumstance, there is just one downstream user. His property is situated at the mouth of Stanshaw Creek and there is virtually no likelihood of a change in the use of his property which would require a change in the current rate of water supply to our ranch.

In a recent letter signed by Harry Schueller and dated September 15, 1998, there is reference to a "recently-constructed reservoir" on the ranch. What was actually done was an enlargement of a long-time existing pond. Enlargement of the pond came about as a result of an arrangement which Doug made with Cal-Trans to dump material from a massive slide which occurred about four miles upriver from the ranch this past winter. The dumping of this material on the ranch resulted in a savings of thousands of dollars to the State. The enlargement of the pond does not affect the flow rate in the canal, nor would it ever, and should therefore not be made a part of the current water rights settlement; it is a non-issue.

May I once again suggest that, in view of the history of this matter and of the many circumstances surrounding the diversion of water to the ranch, we consider proceeding with the formulation of a water rights document for the Marble Mountain Ranch which will assure 1) a continued recognition of the pre-1914 right to appropriate water from Stanshaw Creek for use on the Ranch, and 2) a maximum flow rate in the canal of 3 cfs.

I trust that a satisfactory resolution can be reached soon but that you will be so kind as to extend the existing deadline, if needed, to provide sufficient time for the transfer of essential information between us. I remain

Respectfully yours,



R. Gary Squires
92520 Hwy. 96
Somes Bar, Calif. 95568
(530) 469-3437

P.S. If you wish, we could speed things up a bit by conversing via E-mail. My address is:
GARINGSQ@PCWEB.NET

State of California

The Resources Agency
Department of Fish and Game, Region 1
1625 South Main Street
Yreka, CA 96097



P.O. Box 369
Grenada, CA 96038-0369

Ron Presley
Fish and Game Warden
Stream Protection Officer

Office (916) 841-2557
HQ (916) 436-2347
CHP (916) 841-2505

CM

WR-4

Copies:

10/15/98

THESE ARE THE AERIAL PHOTOS I TOOK
OF THE COLE'S POND NEAR SOMES BAR.
THE POND AT ISSUE IS THE ONE FURTHEST
FROM THE KLAMATH RIVER. THE PHOTOS
WERE TAKEN ON 9/24/98 AT APPROX
1230 HRS.

Lombard

000395





CM
29449
29450**THE LAW OFFICES OF NANCY SMITH***A Professional Law Corporation*4821 Lankershim Boulevard, Suite F 212
West Toluca Lake, California 91602
Telephone (626) 585-9907
Facsimile (818) 763-6775

E-mail: 75244.2246@compuserve.com

Nancy Smith
Yolanda G. Butler, Legal Assistant

October 1, 1998

Chris Murray
Engineer
State Water Resources Control Board
901 P Street
Sacramento, CA 95814**RE: WATER PERMITS 332:CM:29449, 29450**

Dear Mr. Murray:

This will confirm our telephone conversation of October 1, 1998 in which you granted my client, Marble Mountain Ranch, an extension to and including November 30, 1998 in which to respond to the letter dated September 15, 1998 from Harry M. Schueller.

Thank you for your courtesy. If you have any further questions or concerns regarding this matter, please contact me.

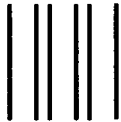
Very Truly Yours,
THE LAW OFFICES OF NANCY SMITH
Nancy SmithNS:yo
murray.0001

cc: Doug Cole

29449/50 CM

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS



WR-4



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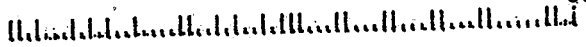
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Print Sender's name, address, and ZIP Code in the space below.

STATE WATER RESOURCES CONTROL BOARD
 DIVISION OF WATER RIGHTS
 P.O. Box 2000
 Sacramento, CA 95812-2000

000399



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3. Article Addressed to:

COLE
 92520 Hwy 96
 Somers Bar CA
 95568

4. Article Number
 483399

Type of Service:

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- Certified COD
- Express Mail Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature - Addressee
 X [Signature]

8. Addressee's Address (ONLY if requested and fee paid)
~~SWR CB - DWR~~
~~P.O. BOX 2000~~
~~SACRAMENTO, CA~~

6. Signature - Agent
 X

7. Date of Delivery
 9-23-98



State Water Resources Control Board

John P. Caffrey, Chairman

SURNAME

WR-4



Peter M. Rooney
Secretary for
Environmental
Protection

Division of Water Rights
901 P Street • Sacramento, California 95814 • (916) 657-0765 FAX (916) 657-1485
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
Internet Address: <http://www.swrcb.ca.gov>

Pete Wilson
Governor

In Reply Refer
to:332:CM:29449, 29450

SEPTEMBER 15 1998

Doug Cole, Heidi Cole,
Norman D. Cole, Caroline Cole
c/o Mr. Doug Cole
92520 Highway 96
Somes Bar, CA 95568

485399 SWB

Dear Mr. Cole:

UNAUTHORIZED DIVERSION--STANSHAW CREEK IN SISKIYOU COUNTY

I understand that you have been involved in an ongoing discussion with the Division of Water Rights (Division) regarding your diversion and use of water from Stanshaw Creek in Siskiyou county. It is my understanding that you have on file with the Division, two pending applications to appropriate water, numbered 29449 and 29450. These applications were filed by the previous owner of your property in Somes Bar, California to authorize his diversions from Stanshaw Creek for use upon the parcel which you now own. You claim pre-1914 appropriative rights as a basis for your ongoing and, apparently increasing diversions for domestic use and hydroelectric power production and you have expressed a desire to withdraw your pending applications.

To date, the Division has been unwilling to cancel your pending applications because you do not appear to have a valid pre-1914 claim for the water you are currently diverting. The Division has supplied you and your attorney with evidence to show that the upper limit of your claim of pre-1914 appropriative rights is 0.49 cubic feet per second (cfs), continuous flow and may appropriately be only 0.11 cfs. This assertion is based upon information contained within the May, 1965 bulletin by the Department of Water Resources entitled "Land and Water Use in the Klamath River Hydrographic Unit" (Bulletin No. 94-6). This publication lists the property, which you now own and states that the total amount of water diverted for irrigation, domestic, stockwatering, and power production totaled 362 acre-feet, annually. This total usage equates to a continuous flow rate of approximately 1/2 cfs. This information was verified by Mr. Marvin Goss, Forest Service Hydrologist, who lived on your property while it was under prior ownership. Mr. Goss evaluated the flow capacity of the ditch as well as measuring the actual amount of water put to use generating power, and found that water had been used at a rate of 0.49 cfs for many years. Mr. Goss determined the flow capacity of the ditch to be 1.25 cfs, limited by a low point in the channel.

Please understand that the nature of any appropriative right is such that it is limited to the amount of water put to continuous, reasonable and beneficial use regardless of the original "face value" of the appropriation. Your predecessor in interest, Mr. Young, submitted a copy of a water appropriation notice by Samuel Stanshaw dating well into pre-1914 times, claiming

SURNAME

SURNAME
LLW 540 REV 2/98

7-21-98

9/14

9/14

FINALED BY:

000401

SEPTEMBER 5 1998

600 miner's inches (15 cfs) of water from Stanshaw Creek for mining purposes. You claim to be successor in interest to Mr. Stanshaw's water rights. Although you have submitted no information to suggest that those rights ever pertained to your parcel of land, the Division is willing to accept, given that you are the current operator of an obviously old ditch on Stanshaw Creek, that you are the successor in interest to Mr. Stanshaw's water rights. However, you are not entitled to the entire 15 cfs appropriation described in Mr. Stanshaw's original notice, due to the documented failure of the previous landowners to apply that amount of water to beneficial use; additionally, your ditch is not capable of carrying that much water and expansion of the ditch does not allow you to reclaim water previously lost by nonuse. All appropriative water rights are limited as to both amount and season to the amounts actually used, which has been documented, in your case, as a maximum of 0.49 cfs for power generation and domestic purposes.

On September 23, 1997 an engineer from this office visited your site and observed that you were diverting water from Stanshaw Creek to supply your hydroelectric power plant. No measurements were taken at that time, but it was the opinion of the engineer that your diversions were well in excess of 0.49 cfs. Based upon the observations made during this visit, Division staff has attempted to help you understand the limitations of your claimed right and the need for the two pending applications. This subject has been discussed in considerable detail with your attorney. You continue to maintain that your current diversions are authorized by your "pre-1914 rights". As you have been advised by my staff, your "pre-1914 rights" are probably limited to your domestic and irrigation needs, which amount to approximately 0.11 cfs. On June 3, 1998 an engineer from this Division measured the flow rate in your ditch (located upon public lands) and determined that you were diverting 2.4 cfs from Stanshaw Creek to operate your hydroelectric power plant.

The Division has received a report from the Department of Fish and Game that you have recently constructed a reservoir upon your property. It is difficult to envision how such a reservoir, constructed in 1998, could be authorized by a pre-1914 appropriative right. Although a pre-1914 right may be changed as to purpose of use, place of use, or point of diversion without the approval of this Division, such a change cannot serve to increase the amount of the right. The construction of a new reservoir is generally considered to be an increase in a water right and usually requires the filing of a new application to appropriate water.

At this time, the Division is willing to cancel application 29450, filed for 0.11 cfs for domestic and irrigation use, as soon as you complete and submit the enclosed Request for Cancellation form and the Statement of Water Diversion and Use form. It would appear that the diversion of this water is authorized under your pre-1914 claim of right. There is no information in our files to indicate that any diversion in excess of 0.11 cfs is authorized under your pre-1914 claim. Consequently, I recommend that you work with my staff to process application 29449. In the event you do not wish to process application 29449, please submit evidence to substantiate your alleged pre-1914 claim of right including a discussion of the recently constructed reservoir (capacity, amount and season of use, basis of right). Such evidence should clearly show the extent water was continuously used from the time of the appropriation to the present. Our files indicate that the hydroelectric plant was installed in the 1940's, so you may wish to substantiate the use of this water between 1914 and 1950. Any claim in excess of 0.49 cfs should be accompanied by substantial evidence to refute the Department of Water Resources' Bulletin 94-6 as well as the testimony of Mr. Goss.

SEPTEMBER 15 1998

If the Division fails to receive the following within 45 days of the date of this letter, this matter will be referred to our Complaints Unit to consider appropriate enforcement action which may include the imposition of Administrative Civil Liabilities (fines) of up to \$500 per day for continued unauthorized use of water:

1. Description and location of your reservoir, use thereof, and basis of right to store water. If a basis cannot be documented, submit the enclosed application forms, properly completed along with the required fees.
2. Statement indicating whether you wish to continue processing application 29449; if not, substantial evidence which shows that your diversion of water has been continuously maintained in time and amount since December 19, 1914;
3. Completed Request for Cancellation form relating to application 29450 as well as a completed Statement of Water Diversion and Use for your domestic and irrigation use of water. *Please note that, in accordance with Section 5105 of the Water Code, the Division is authorized to investigate and determine the facts relating to your diversion, at your expense, if you do not submit a properly completed Statement of Water Diversion and Use within 60 days.*

If you have any further questions, Chris Murray, the engineer assigned to this case, can be reached at (916) 657-2167.

Sincerely,

ORIGINAL SIGNED BY:

Harry M. Schueller, Chief
Division of Water Rights

Enclosures

CERTIFIED

cc: Nancy Smith, Esq.
1041 East Green Street, Suite 203
Pasadena, CA 91106-2417

Department of Fish and Game
Environmental Services
c/o Mr. Ron Prestly
601 Locust Street
Redding, CA 96001

bcc: John O'Hagan

Cmurray:cm/lweir/rmontoya:7-24-98, 8-11-98
u:\cm\449HARRY

P. 01
 WR-2
 EM
 25446
 29449
 29450

THE LAW OFFICES OF NANCY SMITH

A Professional Law Corporation

1041 East Green Street, Suite 203
 Pasadena, California 91106-2417

Telephone (626) 585-9907
 Facsimile (626) 585-8050

Nancy Smith
 Yolanda G. Butler, Legal Assistant

E-mail: 75244,2246@compuserve.com
<http://www.metroguide.com/nancysmith>

PLEASE DELIVER THE FOLLOWING MATERIAL AS SOON AS POSSIBLE.

DATE:	<i>June 3, 1998</i>
TO FAX NO.:	<i>916-657-1485</i>
TO ATTENTION OF:	<i>Christopher O. Murray</i>
COMPANY:	<i>Cal/EPA</i>
FROM:	<i>Nancy Smith</i>
OUR FAX NO.:	<i>(626) 585-8050</i>
ATTACHMENTS:	<i>Letter of June 3, 1998</i>
TOTAL PAGES (PLUS COVER):	<i>3</i>
MESSAGE:	

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THE LAW OFFICES OF NANCY SMITH*A Professional Law Corporation*

Nancy Smith
Yolanda C. Butler, Legal Assistant

1041 East Green Street, Suite 203
Pasadena, California 91106-2417
Telephone (626) 585-9907
Facsimile (626) 585-8050

E-mail: 75284.2246@compuserve.com
<http://www.metroguide.com/nancysmith>

June 3, 1998

VIA FAX (916) 657-1485

Christopher O. Murray, WRC Engineer
Applications and Petition Unit #2
Cal/EPA
P.O. Box 2000
Sacramento, CA 95812-2000

**RE: MARBLE MOUNTAIN RANCH (Water Rights)
APPLICATIONS 25446, 29449 AND 29450**

Dear Mr. Murray:

Please accept my apologies for the misunderstanding concerning your second inspection of the ditch at Marble Mountain Ranch which had been scheduled for June 3, 1998. I understand that as a result of Mr. Cole asking to postpone the inspection, you are no longer able to be there on that date due to travel time.

Mr. Cole wanted me to be available to consult at the time of the inspection, as is his right. As you know, he is concerned about preserving his pre-1914 rights. Unfortunately, he confused my June 12 departure date with June 2 and believed I was not available. In actuality, I will be leaving June 12 and will *return* August 2, 1998. I will be participating in a cross-country bicycle ride to benefit the American Lung Association.

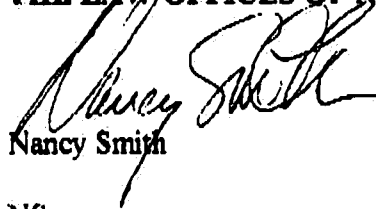
If you are able to reschedule prior to June 12, you are welcome to inspect the ditch. Or, you can reschedule after I return.

Additionally, please be advised that we are gathering further anecdotal evidence for your consideration regarding the historic use of the ditch. We will provide it to you as soon as it is available, probably when I return.

Christopher O. Murray, WRC Engineer
RE: Marble Mountain Ranch (Water Rights)
June 3, 1998
Page 2

Again, I am sorry for the confusion. The communication and logistics of being out the office for seven weeks have proven more difficult than I had thought.

Very Truly Yours,
THE LAW OFFICES OF NANCY SMITH



Nancy Smith

NS:yo

cc: Doug Cole (via fax)

MARBLE.MTNmurray.005

Contact Report

Person Contacted: Doug Cole Date: 6-2-98

Phone Number: 1800-KLAMATH

(He/She/We) Called Returned Call In Person

Division Staff: Chris Murray

Subject: Cancellation of Site Visit

Notes: Mr. Cole called to let me know that he wants to cancel the site visit for tomorrow. He stated that he is unprepared for the visit and that he would like to go hire a new attorney before I come out there. I mentioned to him that such a move is somewhat unprofessional, but it is his decision as to how he wishes to proceed in this matter. HE stated that his actions are not unprofessional and started ranting about how he has a right to an attorney and that he just "found out what my intentions are" and that he needs to have an attorney present. I mentioned to Mr. Cole that my "intentions" were put to him in writing over a year ago and that this meeting was scheduled over a month ago and that I was to leave for his project in four hours time and that I have gone to considerable trouble to set up this meeting. He mentioned rescheduling the meeting and I offered him no assurances that I will be available for another meeting. I let him know that I would write him a letter. Mr. Cole stated that he would contact me later today to reschedule a meeting or determine the next step in the process. The next step should be to determine Mr. Cole's basis of right for the reservoir enlargement project which he has recently undertaken. This project probably does not fall within the realm of his "pre-14" claim.

Contact Report

Person Contacted: Ron Prestly, DFG Date: 5-29-98

Phone Number: (530) 598-1702--Cellular
(530) 841-2557--Office

(He/She/We) Called Returned Call In Person

Division Staff: Chris Murray

Subject: Doug Cole's Reservoir Enlargement Project

Notes: MR. Prestly called Mark Stretars earlier today to determine whether Mr. Cole has a water right filed for his reservoir which was recently enlarged. Mark referred the call to me as I am handling two Direct Diversion applications for Mr. Cole. I contacted Mr. Prestly to discuss the recent developments at Mr. Cole's place. Mr. Prestly stated that he received a complaint regarding Mr. Cole's reservoir construction and went to the property to discuss the matter with the Coles. Apparently, Mrs. Cole became somewhat agitated at Mr. Prestly's presence and ordered him off the property. At any rate, it appears that they have enlarged a reservoir on the property and there is some question as to the extent of the enlargement. This is a matter which should be brought up at the site visit with Mr. Cole next week.

Contact Report

Person Contacted: Doug Cole Date: 5-29-98

Phone Number: 1800-KLAMATH

(He/She/We) Called Returned Call In Person

Division Staff: Chris Murray

Subject: Confirmation of Site Visit

Notes: I called Mr. Cole to confirm that we will be meeting on Wednesday, June 3 at his project site in Somes Bar. Mr. Cole asked what the purpose of the visit was. I explained to him that I would like to help him determine whether a pre-1914 claim of right is sufficient to cover his present level of diversion or if he needs to pursue his current filings (29449 and 29450). I mentioned that if he were to need the current filings to cover his present level of diversion, then I would be willing to take the necessary measurements to determine the capacity of his system to ensure that his applications were filed correctly. Mr. Cole became increasingly agitated as we discussed the site visit and I tried to assure him that I intend to help him through this process. Mr. Cole took some exception to my use of the word "process" and demanded to know what process he is in. I explained that we are trying to determine whether he has a valid claim to the water he is diverting and we will either be processing applications or discussing the validity of his pre-1914 claim. At this, Mr. Cole became somewhat irrational and began to rant about how "the people in your office" (the Division) keep telling him and his attorney conflicting stories. His support for this assertion consisted of the idea that he must decide to either stand upon a pre-1914 claim, or continue to process his pending applications, but if he requests cancellation, the Division will not cancel the applications. I explained to him that it is his obligation to defend his pre-1914 claim of right and that, given the substantial evidence to show that his pre-1914 claim is insufficient to cover his present level of diversion, the Division must pursue the matter and help him ensure that his diversions are authorized by some claim of right. I further explained that I will not cancel his applications until the Division is convinced that he has a valid Pre-1914 claim of right. I told him that this is a service to him, which will prevent his potential loss of filing fees, time spent filing forms, and priority of appropriation in the event that he is unable to prove his pre-1914 claim. I explained that I am willing to help him get through this process as painlessly as possible, but I need some minimal cooperation from him to do so. By the end of the conversation, Mr. Cole appeared to be more comfortable with the idea of my presence on his property.

CM

THE LAW OFFICES OF NANCY SMITH

A Professional Law Corporation

1041 East Green Street, Suite 203
Pasadena, California 91106-2417

Telephone (626) 585-9907
Facsimile (626) 585-8050

Nancy Smith
Yolanda G. Butler, Legal Assistant

E-mail: 75244.2246@compuserve.com
<http://www.metroguide.com/nancysmith>

PLEASE DELIVER THE FOLLOWING MATERIAL AS SOON AS POSSIBLE.

DATE:	<i>May 8, 1998</i>
TO FAX NO.:	<i>916-657-1485</i>
TO ATTENTION OF:	<i>Christopher O. Murray</i>
COMPANY:	<i>Applications & Petition Unit #2 Cal/EPA</i>
FROM:	<i>Nancy Smith</i>
OUR FAX NO.:	<i>(626) 585-8050</i>
ATTACHMENTS:	<i>Letter of 5/8/98</i>
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THE LAW OFFICES OF NANCY SMITH

A Professional Law Corporation

1041 East Green Street, Suite 203
Pasadena, California 91106-2417

Telephone (626) 585-9907
Facsimile (626) 585-8050

Nancy Smith
Yolanda G. Butler, Legal Assistant

E-mail: 75244.2246@compuserve.com
<http://www.metroguide.com/nancysmith>

May 8, 1998

VIA FAX (916) 657-1485

Christopher O. Murray, WRC Engineer
Applications and Petition Unit #2
Cal/EPA
P.O. Box 2000
Sacramento, CA 95812-2000

**RE: MARBLE MOUNTAIN RANCH (Water Rights)
APPLICATIONS 25446, 29449 AND 29450
Your Ref. No. 332:CM:29449**

Dear Mr. Murray:

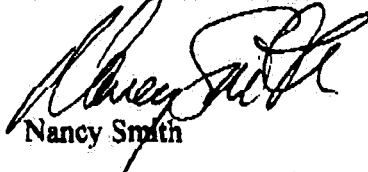
This will confirm that the Ditch Inspection at Marble Mountain Ranch will take place as follows:

DITCH INSPECTION
8-8:30 a.m.
June 3, 1998
Marble Mountain Ranch

We have advised Doug Cole that the inspection will take approximately six hours.

Thank you for your courtesy and cooperation in this regard.

Very Truly Yours,
THE LAW OFFICES OF NANCY SMITH



Nancy Smith

NS:yo

cc: Doug Cole

MARBLE.MTN\murray.005

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

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5. Signature - Address

X *Douglas T. Lee*

6. Signature - Agent

X

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4-20-98

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A#29449

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PENALTY FOR PRIVATE USE, \$300

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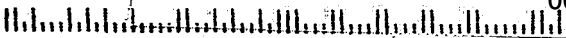
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State Water Resources Control Board
 Division of Water Rights
 P.O. Box 2000
 Sacramento, CA 95812-2000

000413

95812-2000





Cal/EPA

**State Water
Resources
Control Board**

**Division of
Water Rights**

Mailing Address:
P.O. Box 2000
Sacramento, CA
95812-0200

901 P Street
Sacramento, CA
95814
(916) 657-2167
FAX (916) 657-1485

APR 14 1998

Doug Cole, Heidi Cole,
Norman D. Cole, Caroline Cole
c/o Mr. Doug Cole
92520 Highway 96
Somes Bar, CA 95568

375012 ✓
CML

In Reply Refer
to:331:CM:29449



Pete Wilson
Governor

Dear Mr. Cole:

APPLICATIONS 29449 AND 29450--STANSHAW CREEK IN SISKIYOU COUNTY

To date, I have received no response from you regarding my letter dated March 11, 1998 (copy enclosed).

Please understand that without additional information from you, the Division may conclude that your current diversions (confirmed during my September 23, 1997 visit to your project site) for electric power generation are without a valid basis of right. Diverting water without a valid basis of right is a trespass against the State of California and can subject you to significant enforcement actions including the imposition of administrative civil liabilities (fines) of up to \$500.00 per day that water is illegally diverted.

At this time, I am interested in working with you to determine your need for the two pending applications. I would be happy to consider any evidence you may have in support of your claimed Pre-1914 appropriative right and cancel the pending applications if they appear to be duplicative or unnecessary. I cannot take this necessary step without your cooperation. As stated in my most recent letter, I believe a site visit would clarify many of the questions I have relating to this project. Please contact me within fifteen days of the date of this letter and let me know if you feel that a meeting would be the appropriate way to proceed from here. I can be reached at (916) 657-2167 Tuesday through Friday from 7:00 AM-5:00 PM.

Thank you for your anticipated cooperation in this matter.

Sincerely,

ORIGINAL SIGNED BY:

Chris Murray
WRC Engineer
Applications Unit #1

Enclosure

CERTIFIED

cc: Nancy Smith, Esq.
1041 East Green Street, Suite 203
Pasadena, CA 91106-2417

CMurray:cm/pminer:4-14-98
u:\cm\29449now

4-14-98

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4. Article Number

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for Merchandise

Always obtain signature of addressee
or agent and DATE DELIVERED.

5. Signature - Address

X

Dorey Cole

6. Signature - Agent

X

7. Date of Delivery

3-18-98

8. Addressee's Address (ONLY if
requested and fee paid)

000415

App # 29449 Cole CM

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PENALTY FOR PRIVATE USE, \$300

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State Water Resources Control Board
 Division of Water Rights
 P.O. Box 2000
 Sacramento, CA 95812-2000

000416

3812=2000





Cal/EPA

State Water Resources Control Board

Division of Water Rights

Mailing Address: P.O. Box 2000 Sacramento, CA 95812-02000

901 P Street Sacramento, CA 95814 (916) 657-2167 FAX (916) 657-1485



Pete Wilson Governor

In Reply Refer to: 332:CM:29449

MAR 11 1998
Doug Cole, Heidi Cole,
Norman D. Cole, Caroline Cole
c/o Mr. Doug Cole
92520 Highway 96
Somes Bar, CA 95568

974808 *026*

Dear Mr. Cole:

APPLICATIONS 29449 AND 29450--STANSHAW CREEK IN SISKIYOU COUNTY

As you are aware, the previous owners (Youngs) of your property in Somes Bar, California filed two appropriative water right applications with this office which were accepted on March 27, 1989. The Youngs had also protested Application 25446 which sought approval to divert water within the watershed upstream of your points of diversion. The Young's protest was based on potential adverse impacts to a claim of pre-1914 appropriative rights. Processing of your applications was suspended while the Division of Water Rights (Division) attempted to sort out the issues involved, including the validity of the Young's claim of pre-1914 appropriative rights. You recently withdrew the protest against Application 25446. The Division is ready to continue processing of your applications. However, in view of the claim of pre-1914 appropriative rights, the Division is interested in determining to what extent your applications are necessary, and if they are necessary, whether the applications coupled with any claims of pre-1914 appropriative rights will be adequate to justify all of your actual diversion and use of water.

Application 29449 was filed seeking a right to 3 cubic feet per second (cfs), year round by direct diversion for hydroelectric power generation purposes. According to the application, the length of the penstock is 455 feet utilizing 200 feet of fall to generate a maximum of 33.9 kilowatts at 80% efficiency. The earthen channel, which conveys water from Stanshaw Creek to the penstock, is described in the application as having a depth of 12 inches, a width of 24 inches, a length of 5200 feet, and a capacity of 3.2 cfs. During my site visit of September 23, 1997 I was able to confirm that you are still diverting water for this purpose, but the amount of water being diverted was uncertain. Although the average depth and width of the channel is greatly in excess of the dimensions stated on the application, the limiting section, located where the channel traverses a small landslide, appeared to be close to these dimensions. I was unable to obtain confirmation as to the capacity of the pelton wheel and the amount of power being generated at that time. There is a discrepancy in the capacity of the conveyance system on the application in that the capacity of the penstock and the ditch is stated to be 3.2 cfs, the maximum

DM
3-11-98

Rich
3-11-98

Mr. Doug Cole

2

amount of water to be used through the penstock is stated to be 2.5 cfs, and the application was filed for 3.0 cfs.

I must stress the importance of filing for the correct amount. If the amount for which you file is inadequate to cover your diversions, this fact would be discovered during our future license inspection and you would be required to file another application prior to issuance of a license to divert and use water.

Application 29450 was filed for 0.11 cfs for irrigation of 7.0 acres and the domestic uses associated with operation of your commercial enterprise. The conveyance facilities for this water are the same as for Application 29449.

You have claimed a pre-1914 appropriative right to divert the water applied for in these applications.

Given the advanced age of these applications and the fact that they were filed by a previous owner, a meeting on site would probably be the best way to resolve the issues with which you are currently faced. It appears that your pre-1914 claim covers at least part of the water applied for under these applications; it is possible that at least one of the applications may be withdrawn. Be aware that *obtaining an appropriative right is becoming more difficult as the state is faced with additional demand upon its limited resources*. I believe that it is vital that you take steps to ensure that your water rights are adequate to cover your present level of diversion at this time.

I would like to schedule a meeting with you and my supervisor, Mr. Charles Rich, in Somes Bar to discuss your pre-1914 claim and to determine the best course of action relative to your pending applications. Please contact me within 30 days of the date of this letter to discuss a convenient time for you to meet with us. I can be reached at (916) 657-2167. Please do not hesitate to call if you have any questions or concerns.

Sincerely,

ORIGINAL SIGNED BY:

Chris Murray
WRC Engineer
Applications and Petitions Unit #2

CERTIFIED

cc: Nancy Smith, Esq.
1041 East Green Street, Suite 203
Pasadena, CA 91106-2417

CMurray:cm/pminer:3-11-98

u:\cm\29449

Contact Report

Person Contacted: **Nancy Smith** Date: **12-9-97**

(He/She/We) Called Returned Call In Person

Division Staff: **Chris Murray**

Subject: **Cole's Protest against 25449--Brickell et al.**

Notes: **Ms. Smith called to let me know that she is mailing a document which withdraws the Cole's protest against the Brickell's application. She asked what the next step is now. I told her that I am free to issue a permit to Brickell and we can begin to process her client's applications or enter into more detailed discussions regarding the validity of her client's pre-14 claim.**

Review Coles filings and call Nancy back when her letter arrives.

Contact Report

Person Contacted: **Nancy Smith (Cole's atty)** Date: **12-3-97**

(He/She/We) Called Returned Call In Person

Division Staff: **Chris Murray**

Subject: **Protest to Application 25446**

Notes: Ms. Smith called me in response to my phone call yesterday as she needed additional time to review materials which her client had submitted to her. She began by asking whether there can be a term included in a permit issued to her client which recognizes their claim to a pre-14 right. I told her that we cannot verify her client's pre-14 claim, it is early to discuss terms and conditions, and we have a standard term which mentions alternate claims of right. We discussed her client's pre-14 claim in some detail and I enumerated some of the evidence which calls into question this alleged right. I pointed out that the Division has requested that her client's prove up on this claim if they intend to continue with their protest and they have failed to show continuous use dating back to pre-14 days. She asked whether they could cancel this application at a later date if evidence were to come to light or if they had their pre-14 claim blessed by a judge. I told her that her client may cancel this application at any time if they can show that they have adequate rights to cover their diversions. I mentioned that the Division will have no choice but to reject her client's protest and further question their claim of right if they are unwilling to drop their protest or prove the validity of their pre-14 claim. I mentioned that this may occur soon so the time to act is now. She appeared to understand.

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25446
29-49,50

THE LAW OFFICES OF NANCY SMITH

A Professional Law Corporation

1041 East Green Street, Suite 203
Pasadena, California 91106-2417
Telephone (818) 585-9907
Facsimile (818) 585-8050

Nancy Smith
Yolanda G. Butler, Legal Assistant

E-mail: 75244,2246@compuserve.com
<http://www.metroguide.com/nancysmith>

April 28, 1997

Christopher O. Murray, WRC Engineer
Applications and Petition Unit #2
Cal/EPA
P.O. Box 200
Sacramento, CA 95812

RE: APPLICATIONS 25446, 29449 AND 29450

Dear Mr. Murray:

This will confirm our telephone conversation of April 28, 1997 regarding the above-captioned applications and acknowledge receipt of your letter of March 19, 1997. As I indicated, my office has been retained to represent the Cole Family and Marble Mountain Ranch in connection with the above-referenced applications.

You advised that you had received no response to your letter of March 19, 1997 from the Brickell family at Mountain Home Ranch. You indicated you would be sending them another letter requesting a response soon. If you do not receive any response, you will move forward with canceling their application.

In light of the somewhat technical nature of these applications, you and I agreed that we would await a determination of whether Mountain Home Ranch owners will respond to your requests. Because you plan to cancel the Mountain Home Ranch application if you do not receive a timely response, we agree that you and I will confer again in 90 days on the application by Marble Mountain Ranch and the Cole Family. If the Mountain Home Ranch application is not pending, it will simplify the application of my clients.

Christopher O. Murray

RE: Applications 25446, 29449 & 29450

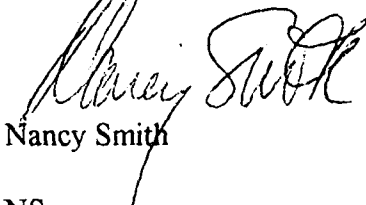
April 28, 1997

Page 2

As we discussed, kindly send us copies of your correspondence with the owners of Mountain Home Ranch. If, for any reason, you wish to expedite resolution of my clients' application sooner than we agreed, please do not hesitate to call.

Very Truly Yours,

THE LAW OFFICES OF NANCY SMITH



Nancy Smith

NS:yo

cc: Doug Cole, Heidi Cole, Norman D. Cole and Caroline Cole c/o Doug Cole

MARBLE.MTN\murray.001

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Contact Report

Person Contacted: Nancy Smith Date: 4-28-97

COLES ATTORNEY
(He/She/We) ~~Called~~ ~~Returned Call~~ In Person

Division Staff: Chris Murray

Subject: COLE/BRICKELL APPLICATIONS TO APPROPRIATE WATER FROM STANSHAW CREEK AND TRIBUTARIES IN SISKIYOU COUNTY.

Notes:

I discussed with Ms. Smith the status of these applications as far as we are concerned. She had a number of questions about water rights in general and what the process is for perfecting a right. I told her that although the Coles probably have a valid pre-1914 right, it is doubtful whether the right will cover all present use. I told her that her clients could attempt to provide evidence that their pre-1914 right is valid and sufficient to cover all present diversions, they would be better off to follow through with the current applications. This would probably be a cheaper and easier route to assure themselves that their rights are valid. I explained that we have a report from Goss which states that their measured usage in the 1970's was 0.49 cfs. Any pre-1914 claims above that amount would need to address this report.

Ms. Smith told me that Coles and Brickells had reached some kind of agreement. She was asked to draft the agreement but she does not know if it was ever signed. She said that she has not been able to get the Brickells to respond for a year.

I told Ms. Smith that I would send the Brickells a follow up letter this week (certified, 30 day) and after that initiate the cancellation process (60 days). She said she would hold off for 90 days before running up a lot of billable time for her client, so that Brickells have an opportunity to respond and, perhaps, we might begin to move on Coles application. I told her that she probably has 90 days before anything happens which would cause her clients to need her, but I would like to be able to call her up sooner if necessary. I emphasized that we want to move these apps so if we get an opportunity to get going on them I will want to get going on them.





Cal/EPA

State Water Resources Control Board

Division of Water Rights

Mailing Address: P.O. Box 2000 Sacramento, CA 95812-2000

901 P Street Sacramento, CA 95814 (916) 657-2167 FAX (916) 657-1485

MARCH 19 1997

In Reply Refer to: 332:CM:25446



Pete Wilson Governor

Michael Brickell, Elizabeth Brickell, Barbara Short, Steve Robison, Bruce Robinson and Susie Robison c/o Barbara Short Patterson Ranch Somes Bar, CA 95568

Doug Cole, Heidi Cole, Norman D. Cole, and Caroline Cole c/o Doug Cole 92520 Highway 96 Somes Bar, CA 95568

Dear Mr. Cole and Ms. Short:

APPLICATIONS 25446, 29449, AND 29450 TO APPROPRIATE WATER FROM STANSHAW CREEK AND UNNAMED TRIBUTARIES TO STANSHAW CREEK IN SISKIYOU COUNTY

I have recently been assigned the task of processing the above mentioned applications. My review of the files for these applications indicates that a dispute exists between the parties regarding priority of use. I also understand that the Cole's believe they possess a valid pre-1914 appropriative right and Brickell, et al. believe they possess valid riparian rights. Both groups appear to have some interest in cancelling the above mentioned applications in favor of these claims of right in order to obtain a better priority.

Please be advised that while the Division of Water Rights (Division) does not currently have sufficient information to refute these claims of right, we believe that the validity of both claims is uncertain at this time and may not withstand more intensive review. Only a court of competent jurisdiction can make a final determination of the validity and priority of these claims of right. This can be time consuming as well as an expensive process upon which to embark. If your claims of right do not fully cover all of your diversions, you would be trespassing against the State of California and would also be subject to appropriate enforcement actions including the imposition of significant fines. Consequently, we do not believe that cancellation of your applications is in your best interests at this time. We recommend that the processing of your applications be resumed.

To that end, we need written confirmation regarding whether you wish to proceed with these applications or have them cancelled. If you wish to cancel your application(s), we need either:

Handwritten notes: CM 3-18-97, Rich 3-18-97

MARCH 19 1997

Mr. Cole and Ms. Short

-2-

1. Verification of the validity of the rights under which you will be diverting water; or
2. A written statement that the diversion and use of water will be terminated.

Verification of riparian or pre-1914 claims rights will not be easy. There are at least two ways to achieve this. The first way is to retain the services of an attorney or a consultant who is well versed in water rights law and have that individual prepare a written analysis in support of your claimed rights. If the Division agrees with the conclusions of such an analysis, your applications could be cancelled with a considerably reduced risk of enforcement action at a later date.

The other option is to schedule a field inspection by Division staff to examine your diversion and use of water and any other evidence you may have that supports your claims of right. If Division staff conclude that adequate riparian or pre-1914 rights exist, a letter would be sent to that effect and cancellation proceedings would be initiated. If Division staff conclude that adequate riparian or pre-1914 rights do not exist to justify all of your diversions, we could attempt to find a mutually acceptable resolution that would allow for issuance of permits under your pending applications. If such a solution could not be found, this inspection would also serve as a field investigation as required by Section 1345 et seq. of the Water Code (copy enclosed). A final staff recommendation regarding disposition of protests and action on the pending applications would be developed as soon as possible thereafter.

Please notify this office within 30 days from the date of this letter of the course of action you wish to pursue. If you wish to pursue the first course of action and need additional time to prepare supporting documentation, please let us know how much additional time will be required. If you wish to pursue the field investigation by Division staff, please let us know if there is a specific time of year that you feel would be best for an inspection. We would attempt to provide two to three weeks advance notice of any inspection. If there are any questions, I can be reached at the above address or at (916) 657-2167.

Sincerely,

ORIGINAL SIGNED BY:

Christopher O. Murray
WRC Engineer
Applications and Petition Unit #2

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Article 1.5. Minor Protested Applications Procedure

1345. The board's Division of Water Rights shall conduct a field investigation and prepare a staff analysis of all minor protested applications. The division shall send the staff analysis by registered mail to the applicant and to any protestant.

1346. Unless the board's Division of Water Rights receives a written request for a hearing from the applicant or any protestant within 30 days after the date of mailing, the board may act on the minor application without a hearing.

1347. A request for a hearing shall specify the issues unresolved among the parties, and the board shall restrict any hearing to consideration of such unresolved issues.

1348. For purposes of this article, a minor application shall mean any application which does not involve direct diversions in excess of three cubic-feet per second or storage in excess of 200 acre-feet per year.

STATE WATER RESOURCES CONTROL BOARD

PAUL R. BONDERSON BUILDING
901 P STREET
SACRAMENTO, CALIFORNIA 95814
(916) 657-1954
FAX: 657-1485

Mailing Address

DIVISION OF WATER RIGHTS
P.O. BOX 2000, Sacramento, CA 95812-2000



FEBRUARY 23 1995

In Reply Refer
to: 331:WV:25446

29449

Doug Cole, Heide Cole,
Norman D. Cole and Caroline Cole
c/o Doug Cole
92520 Highway 96
Somes Bar, CA 95568

Dear Mr. Cole:

APPLICATION 25446 OF MICHAEL BRICKEL ET AL.--UNNAMED STREAMS TRIBUTARY TO STANSHAW CREEK IN SISKIYOU COUNTY

In 1980, Bob and Judy Allen Young (Young), as prior owners of your commercial enterprise, filed a protest against the above referenced application to appropriate water from tributaries to Stanshaw Creek. Young claimed prior rights to all the flow of Stanshaw Creek and tributaries based on a claim of pre-1914 appropriative rights and a claim of riparian rights. The Young protest was accepted by the Division of Water Rights (Division) though Young was subsequently advised that such acceptance did not substantiate his claimed water rights. Nevertheless, and in an attempt to resolve the protest, Division staff proposed reducing the diversion rate for irrigation under Application 25446 from 0.14 to 0.07 cubic foot per second (cfs) and proposed a requirement for metering the diversion from the tributaries to Stanshaw Creek. These conditions were acceptable to Young and the representative, at that time, of the applicant. Due to various reasons, however, apparently including litigation between the parties, further processing of Application 25446 was deferred for a number of years.

In late 1994, we advised the applicant that a permit was finally ready to be issued. Ms. Barbara Short, current representative of the applicant, by letter of January 18, 1995 requested that the metering requirement be deleted from the permit and provided hydrologic and other information in support of her request. A copy of that letter and the March 17, 1990 report by Marvin Goss, Hydrologist, is enclosed. This is the first time Division staff was aware of any hydrologic data on Stanshaw Creek.

The only evidence in our file of a pre-1914 appropriative right for the property you acquired from Young is a water notice (copy enclosed) which accompanied the Young protest of Application 25446. In the absence of back-up material (map, etc.) this notice, by itself, is inconclusive that a pre-1914 appropriative right attaches to the property. In addition, there is no Statement of Water Diversion and Use (Statement) on file with the Division for diversion of water from Stanshaw Creek. All diverters of surface water, with certain exceptions which are not applicable in this situation, are required to file a Statement with the Division pursuant to Water Code Section 5100 et seq.

This requirement applies to water diverted under claim of riparian right and to appropriations initiated prior to December 19, 1914, the effective date of the California Water Commission Act. Young was advised on several occasions of this requirement.

Even if we are to assume a valid pre-1914 right attaches to your property, the amount claimed in the 1867 notice, which is illegible but stated to be 600 miners inches or 15 cfs¹, is well in excess of past use which is documented in the Goss Report at 0.49 cfs from 1958 to 1990. On the basis of this information, the right to any amount in excess of 0.49 cfs would have been lost through five years of non-use (Smith v. Hawking 42 P.454). It also appears that a substantial portion of the water presently being diverted by you from Stanshaw Creek is for hydro power use. According to information in the files of Applications 29449 and 29450, which were recently assigned to you, the hydro power turbine was installed between 1940 and 1942, well after 1914. Therefore, it appears that any pre-1914 claim, even if valid, to Stanshaw Creek water would most likely be limited to the consumptive use on your property for domestic and irrigation purposes. This use was determined to be 0.11 cfs (Application 29450). As can be seen from the Goss Report, the estimated flow of Stanshaw Creek at the Young Ranch diversion is well in excess of this amount, even in drought years.

In consideration of the above, as well as the request of Ms. Barbara Short, we will delete the previously agreed to metering requirement and re-instate the initially requested irrigation direct diversion rate of 0.14 cfs for processing any permit issued pursuant to Application 25446 unless, within 60 days from the date of this letter you provide information that clearly documents the existence of a valid pre-1914 appropriative or riparian claim of right to the waters of Stanshaw Creek for your property. If you do not submit the verifying documentation, we will assume that you do not object to the above described process, and we will proceed toward issuance of a permit for Application 25446.

If you have any questions regarding this matter, please contact Wm. Van Dyck of my staff at (916) 653-0438.

Sincerely,

ORIGINAL SIGNED BY
Murt Lininger
Program Manager
Application and Hearing Section.

Enclosures

CERTIFIED

cc: Brickell et al.
c/o Ms. Barbara Short
Mountain Home/Patterson Ranch
Somes Bar, CA 95568

bcc: A29449-50
WVanDyck:larchuleta:2-3-95:pminer:2-21,22-95
o:\wv\25446

29449

(916) 657-2046
FAX: (916) 657-1485

In Reply Refer
to:341:RMD:29449 & 29450

NOV 17 1994

Doug Cole, Heidi Cole,
Norman D. Cole, and Caroline Cole
c/o Doug Cole
92520 Highway 96
Somes Bar, CA 95568

Dear Mr. Cole:

APPLICATIONS 29449 AND 29450 STANSHAW CREEK TRIBUTARY TO KLAMATH
RIVER IN SISKIYOU COUNTY

This letter is to follow up phone conversations with you and
Heidi Cole on November 16, 1994 concerning the above-referenced
water right applications.

As requested, we are changing our records to show new owners/
address/phone number, unless notified otherwise within 30 days,
as follows:

Doug Cole, Heidi Cole,
Norman D. Cole, and Caroline Cole
c/o Doug Cole
92520 Highway 96
Somes Bar, CA 95568

(916)469-3322

Questions regarding the status of the applications should be
referred to Kathy Mrowka of our Application & Hearing Section.
She can be reached at the above address or at (916)657-1951.

Thank you for your cooperation.

Sincerely,

ORIGINAL SIGNED BY

Ronald M. Duff
Associate WRC Engineer
Permit and License Unit

cc: Robert E. Young &
Mary Judith Young
c/o Thomas Birmingham
770 L Street, Suite 1200
Sacramento, CA 95814

Bob Young
834 Columbia Drive
Woodland, CA 95695

BCC: KSN & KDM RMDuff\lbitnoff 11/17/94

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11-17-94

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29449 & 50

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
770 L STREET, SUITE 1200
SACRAMENTO, CALIFORNIA 95814-3363
TELEPHONE (916) 444-8920

April 13, 1993

Ms. Katherine Mrowka
Associate WRC Engineer
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

Re: Applications 29449 and 29450 of Robert E. and Mary
Judith Young -- Stanshaw Creek In Siskiyou County

Dear Ms. Mrowka:

This letter serves as a response to your letters to our clients, Robert and Mary Judith Young, dated February 4, 1993, requesting information you require in order to complete the initial review of Applications 29449 and 29450. (See Attached). We will reply first to those questions pertaining to Application No. 29449 and then to those pertaining to Application No. 29450.

QUESTIONS PERTAINING TO APPLICATION NO. ²⁹⁴⁵⁰29449

QUESTION NO. 1:

Division staff has recommended 0.02 cfs for domestic use and 0.09 cfs for irrigation purposes. You have asked whether our clients concur with these recommendations.

RESPONSE NO. 1:

The Youngs have no objections to the Division staff recommendations of 0.02 cfs for domestic use and 0.09 cfs for irrigation purposes.

You have also requested additional information to complete the environmental supplement to the application. You have requested answers to the following questions:

Ms. Katherine Mrowka
April 13, 1993
Page 2

8447.1

QUESTION NO. 2 OF ENVIRONMENTAL SUPPLEMENT:

Indicate whether or not any permitting agency prepared any environmental documents for the project. If so, please complete the answers to the last part of question number 2.

RESPONSE TO QUESTION NO. 2:

No environmental documents were prepared for the project by any permitting agency.

QUESTION NO. 3:

Please describe the types of existing vegetation (such as grasslands, pine forest, oak-grass foothills, etc.) at the point of diversion, immediately downstream of the point of diversion, and at the place where the water is to be used. Please be sure to include photographs of these areas with the vegetation types showing in the photograph.

RESPONSE TO QUESTION NO. 3:

The ranch is in the Klamath National Forest. Consequently, the vegetation at the point of diversion and immediately downstream of the point of diversion, consists primarily of pine forests. The place where the water is to be used consists of irrigated grassland and orchards.

QUESTION NO. 4:

Indicate what changes in the project site and surrounding area will occur or are likely to occur because of construction and operation of the project.

RESPONSE TO QUESTION NO. 4:

No changes in the project site are contemplated as a result of the construction or operation of the project.

QUESTION NO. 5:

Indicate whether or not your client is willing to make the changes in the project as recommended by the Department of Fish and Game.

Ms. Katherine Mrowka
April 13, 1993
Page 3

8447.1

RESPONSE TO QUESTION NO. 5:

The Department of Fish and Game indicated to the Youngs last year that no changes were necessary. If they do suggest changes in the future, our clients acquiescence will depend on the nature of the suggested changes.

QUESTIONS PERTAINING TO APPLICATION NO. 2945⁴⁹~~50~~

QUESTION NO. 1:

Based upon the project description, Division staff cannot determine where the 1 cfs which is requested for fish enhancement is utilized, or how the fishlife is enhanced. Please describe this element of the project.

RESPONSE NO. 1:

The applicant no longer proposes to use water for fish enhancement.

QUESTION NO. 2:

The application states that the maximum flow which can be used through the penstock is 2.5 cfs. It appears, however, that 4 cfs is diverted from Stanshaw Creek in order to maintain 2.5 cfs at the powerhouse. Is this information accurate?

RESPONSE NO. 2:

No.

QUESTION NO. 3:

Does the flume and ditch section lose 1.5 cfs, for a loss rate of 37.5 percent of the diverted flow?

RESPONSE NO. 3:

No.

QUESTION NO. 4:

What is the total loss rate for the existing system, from Stanshaw Creek to the Irving Creek point of discharge?

Ms. Katherine Mrowka
April 13, 1993
Page 4

8447.1

RESPONSE NO. 4:

The Youngs inform us that the loss rate is less than .5 cfs.

QUESTION NO. 5:

When was the hydropower turbine first installed?

RESPONSE NO. 5:

The Youngs are not sure when the hydropower turbine was installed. However, the previous property owner has indicated to them that the hydropower turbine was installed between 1940 and 1942.

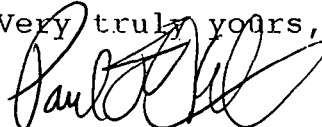
QUESTION NO. 6:

You have indicated that an engineered map prepared by a civil engineer or land surveyor is required for applications which request more than 3 cfs. For a hydroelectric project, the map shall show the point of diversion, the conduit, penstock and power house and the point at which the water is returned to the stream. For applications requesting more than 3 cfs, a profile of the penstock is also required.

RESPONSE NO. 6:

The Youngs now propose to divert 3 cfs and request that the application be amended to so reflect. Therefore, the map requirement will not apply to their application.

If you have any questions regarding this matter, please do not hesitate to contact me.

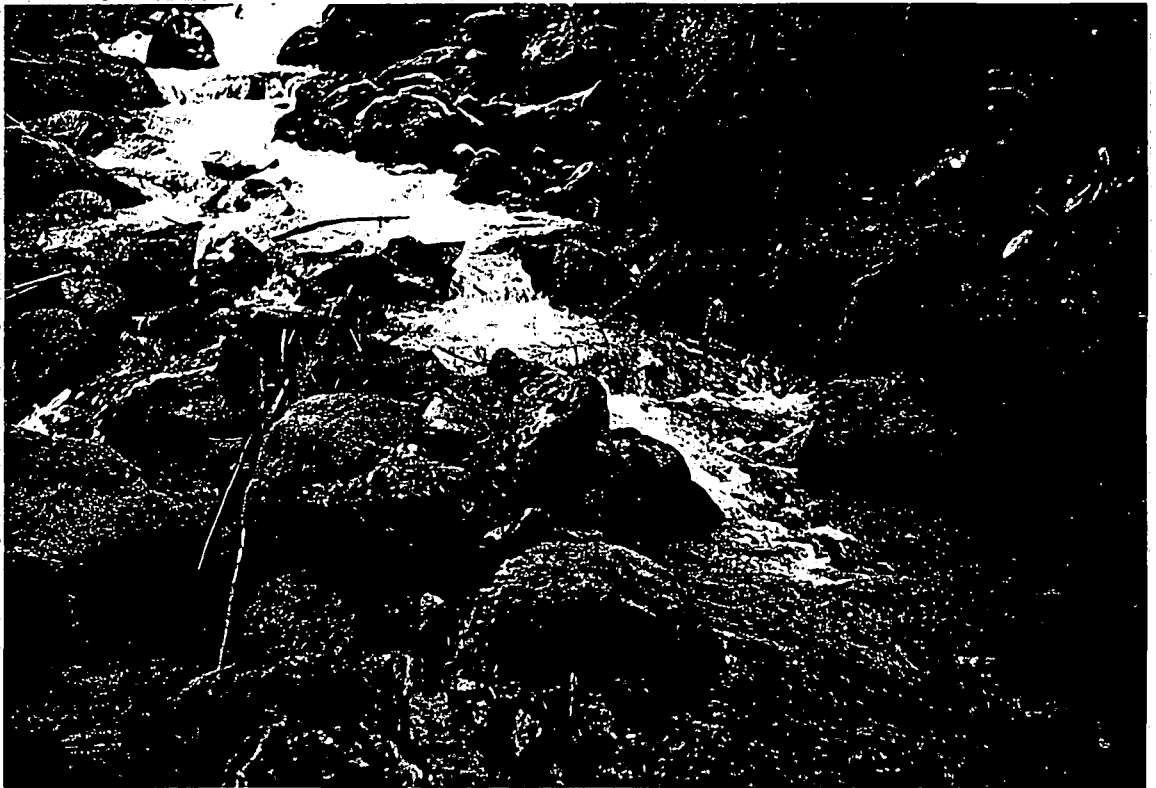
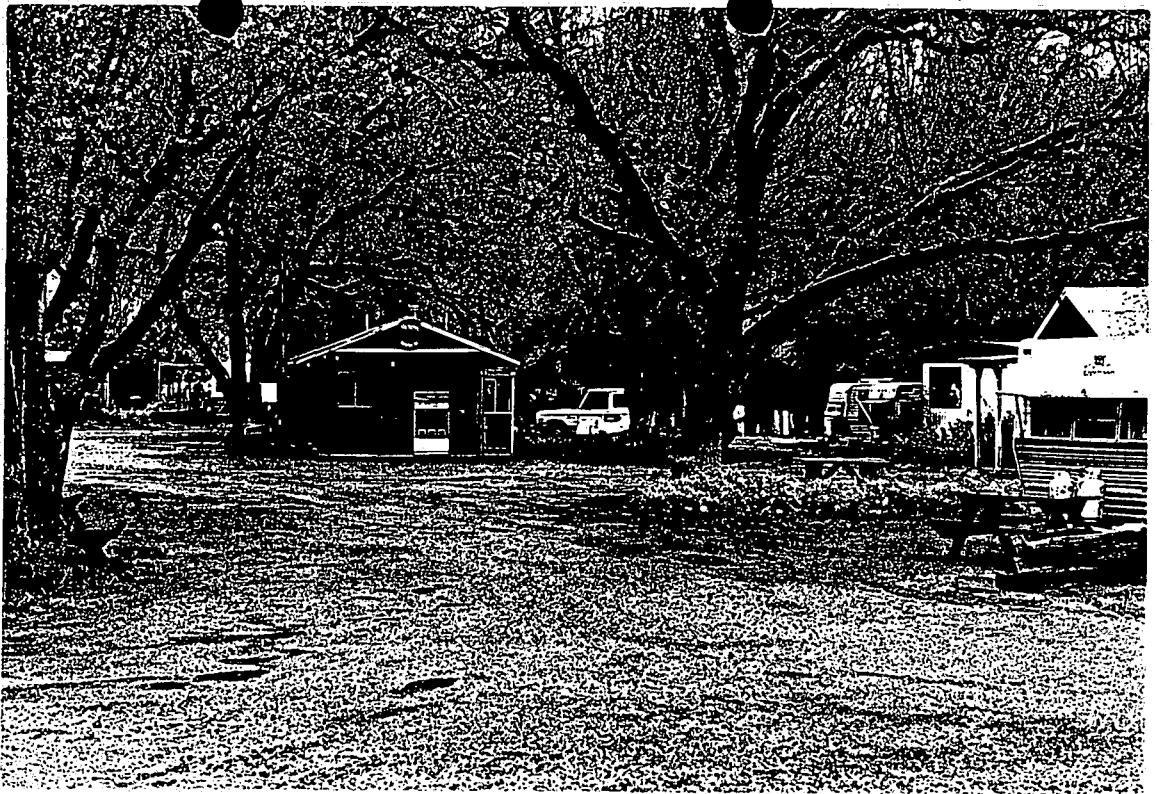
Very truly yours,


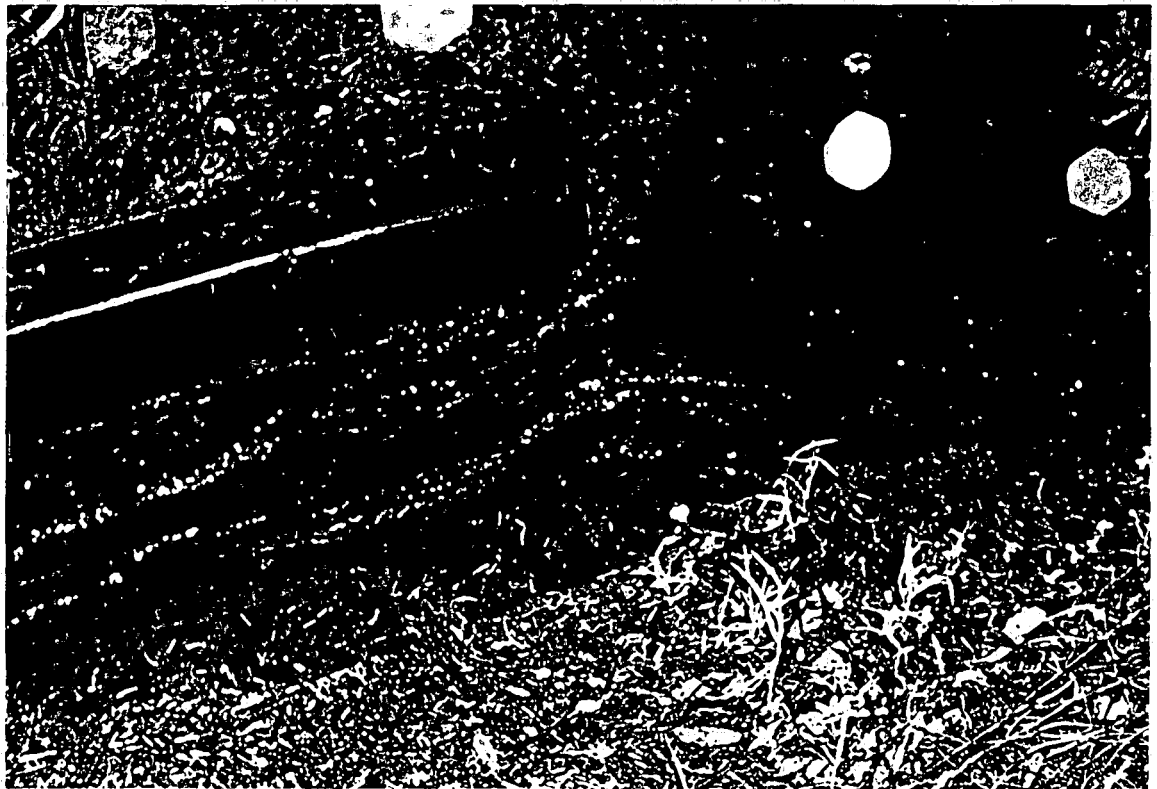
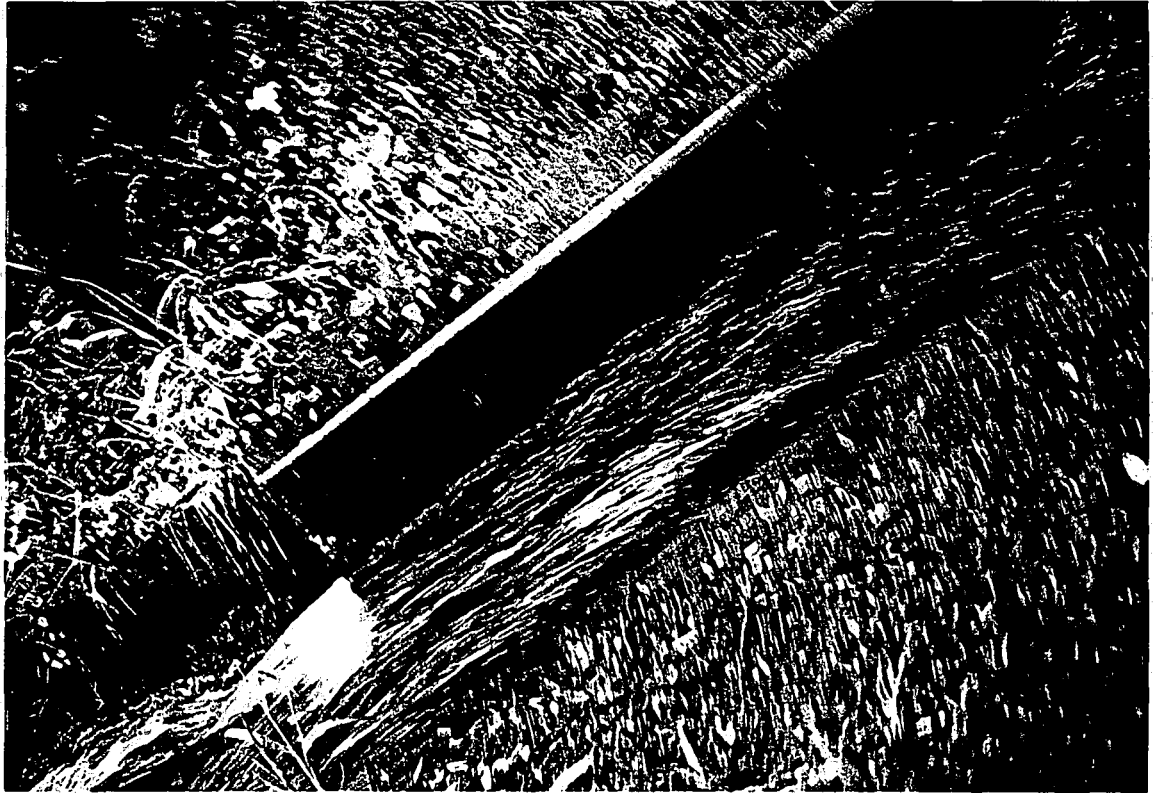
PAUL F. KELLY
Law Clerk

PFK:cks

Enclosures

cc: Robert and Mary Judith Young
Thomas W. Birmingham, Esq.
Jeffrey A. Mitchell, Esq.





(916) 657-1951

FAX: (916) 657-1485

In Reply Refer
to:333:KDM:29449

FEBRUARY 04 1993

Robert E. and Mary Judith Young
c/o Mr. Thomas W. Birmingham
770 L Street, Suite 1200
Sacramento, CA 95814

Dear Mr. Birmingham:

APPLICATION 29449 OF ROBERT E. AND MARY JUDITH YOUNG--STANSHAW CREEK IN
SISKIYOU COUNTY

On August 25, 1992, Division of Water Rights (Division) staff wrote to inform your clients, Robert and Mary Judith Young, that additional information is required before Division staff will be able to complete the initial review of Application 29449. No response was received. The issues which require a response are described below.

The application requests a right to directly divert 3 cubic feet per second (cfs) from Stanshaw Creek to generate hydroelectric power, and 1 cfs for fish enhancement. The water will be diverted through 5,200 feet of flume and earthen channel, then through 455 feet of 16-inch steel pipe. Any water not required to meet the domestic and irrigation uses described in Application 29450 of Young will be discharged into Irving Creek, and thence into the Klamath River.

Based upon the project description, Division staff cannot determine where the 1 cfs which is requested for fish enhancement is utilized, or how the fishlife is enhanced. Please describe this element of the project.

The application states that the maximum flow which can be used through the penstock is 2.5 cfs. It appears, however, that 4 cfs is diverted from Stanshaw Creek in order to maintain 2.5 cfs at the powerhouse. Is this information accurate? Does the flume and ditch section lose 1.5 cfs, for a loss rate of 37.5 percent of the diverted flow? What is the total loss rate for the existing system, from Stanshaw Creek to the Irving Creek point of discharge? When was the hydropower turbine first installed?

The map requirements for applications which request more than 3 cfs are described in Section 717 of Title 23, California Code of Regulations (Regulations). A copy of the map requirements was provided with the August 25, 1992 letter. An engineered map prepared by a civil engineer or land surveyor is required. For a hydroelectric project, the map shall show the point of diversion, the conduit, penstock and power house and the point at

FEBRUARY 04 1993

WR-4

Robert E. and Mary Judith Young -2-

which the water is returned to the stream. For applications requesting more than 3 cfs, a profile of the penstock is also required (see Section 720 of the Regulations).

A response is requested within the next 30 days. Please note that failure by an applicant to comply with a written request for information within a reasonable time may be cause for the Division to cancel an application pursuant to Government Code Section 65956(c). Division staff is available to answer any questions you might have. I can be contacted at (916) 657-1951.

Sincerely,

ORIGINAL SIGNED BY:

Katherine Mrowka
Associate WRC Engineer
Hearings Unit

Enclosure

cc: Robert E. and Mary Judith Young
Youngs Ranch
Somes Bar, CA 95568

000437

(916) 657-1951

FAX: (916) 657-2388

In Reply Refer
to:333:KDM:29449

AUGUST 25 1992

Robert E. and Mary Judith Young
c/o Mr. Thomas W. Birmingham
770 L Street, Suite 1200
Sacramento, CA 95814

Dear Mr. Birmingham:

APPLICATION 29449 OF ROBERT E. AND MARY JUDITH YOUNG--STANSHAW CREEK IN
SISKIYOU COUNTY

Division of Water Rights (Division) staff has reviewed Application 29449 of Robert E. and Mary Judith Young to determine whether it is sufficiently complete to be noticed. The application requests a right to directly divert 3 cubic feet per second (cfs) from Stanshaw Creek to generate hydroelectric power, and 1 cfs for fish enhancement. The water will be diverted through 5,200 feet of flume and earthen channel, then through 455 feet of 16-inch steel pipe. Any water not required to meet the domestic and irrigation uses described in Application 29450 of Young will be discharged into Irving Creek, and thence into the Klamath River.

Based upon the project description, Division staff cannot determine where the 1 cfs which is requested for fish enhancement is utilized, or how the fishlife is enhanced. Please describe this element of the project.

The application states that the maximum flow which can be used through the penstock is 2.5 cfs. It appears, however, that 4 cfs is diverted from Stanshaw Creek in order to maintain 2.5 cfs at the powerhouse. Is this information accurate? Does the flume and ditch section lose 1.5 cfs, for a loss rate of 37.5 percent of the diverted flow? What is the total loss rate for the existing system, from Stanshaw Creek to the Irving Creek point of discharge? When was the hydropower turbine first installed?

The map requirements for applications which request more than 3 cfs are described in Section 717 of Title 23, California Code of Regulations (Regulations). A copy of the map requirements is enclosed for your use. An engineered map prepared by a civil engineer or land surveyor is required. For a hydroelectric project, the map shall show the point of diversion, the conduit, penstock and power house and the point at which the water is returned

KDM 8-25-92

VAW 8/25/92

Robert E. and Mary Judith Young -2-

to the stream. For applications requesting more than 3 cfs, a profile of the penstock is also required (see Section 720 of the Regulations).

I can be contacted at (916) 657-1951 if you have any questions.

Sincerely,

ORIGINAL SIGNED BY:

Katherine Mrowka
Associate WRC Engineer
Hearings Unit

Enclosure

bcc: Tom McKenzie

KDM:KMrowka:8-25-92:29449

29449

CONTACT REPORT

DIVISION OF WATER RIGHTS

STATE WATER RESOURCES CONTROL BOARD

Subject A29449 of Young

Division Personnel Katherine Manka

Date 8-18-92 Time _____

Personal Where _____

Telephone Number _____

Individual(s)/Agency Contacted Dave Hoopough and Dennis - of DFG

Conversation Description Dennis has seen the Young's ditch system. The ditch was built in the 1860's by Chinese ~~labors~~ labor. I explained that a pre-1914 appropriative right can only be established for water which is beneficially used and must be continually maintained or it could be lost through 5 or more years of non-use. I asked if they had any idea when the hydropower use started. They believed this use to be recent in origin. I explained that what we are presently dealing with is just A29449, and not a claimed pre-1914 appropriative right. The ditch has been enlarged into a pond after the Pelton wheel. The fish in the ditch should be well supported by the hydropower flows. All of the diverted water is run through the Pelton wheel. Stanshaw Creek only has 2-3 cfs in the summer months in the lower 1/2 mile or so.

Decision(s) _____

Action Items _____

SURNAME	Kdm 8-18-92		
---------	-------------	--	--

Memorandum

To : Walter Pettit, Chief
Division of Water Rights

JUN 19 1989

WBR

WBR MF

A 29449

File

Debra Pritchard
From: Debra Pritchard, Coordinator
Task Program, Budget Office
STATE WATER RESOURCES CONTROL BOARD
Subject: TASK NUMBER APPROVED

The following task number has been approved, effective March 27, 1989,
per your request:

<u>Task Number</u>	<u>Task Title</u>
594-49	SH# 89-A29449 - Robert E. Young and Mary Judith Young

Attachment

- cc: Budget Managers
- Contracts Office
- Josie Krostek, Accounting Office
- Kathy Rokusek, Business Services Office
- Budget Analysts
- Dale Claypoole, Program Control
- Cindy Anderson, Division of Water Rights
- Roger Dupris, Division of Water Rights

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

STATE WATER RESOURCES CONTROL BOARD
THE PAUL R. BONDERSON BUILDING
901 P Street, Sacramento, CA

DIVISION OF WATER RIGHTS
P.O. BOX 2000, Sacramento, CA 95810



In Reply Refer
to: 332:MRB

Robert E. & Mary Judith Young
c/o Thomas W. Birmingham
770 L Street, Suite 1200
Sacramento, CA 95814

638388

APPLICATION TO APPROPRIATE WATER FOR SMALL HYDROELECTRIC POWER USE FROM
Stanshaw Creek in Siskiyou County

29449

Your application has been accepted and assigned No. 29449.
The application fee for small hydroelectric projects defined in Water Code Section 1250.5 is set forth in Title 23 of the California Administrative Code Section 677. It is based on the actual costs of the State Water Resources Control Board and the Department of Fish and Game to process the application. The amount due, as shown below, is a deposit against the actual cost of processing your application. You will be billed for additional deposits as needed to complete processing of your application.

Application Fee Required

Initial Deposit	\$	<u>1000.00</u>
Amount Received	\$	<u>100.00</u>
AMOUNT NOW DUE	\$	<u>900.00</u>

The above amount is now due and payable. Water Code Section 1527 requires rejection of this application if the amount due is not received within 30 calendar days of the date of this letter. If you have any questions about this bill, please call Mark R. Bradley at (916) 324- 5729

WALTER G. PETTIT, Chief
Division of water Rights

CERTIFIED

5-2-87
\$ 900.00
M

000442

CONTACT REPORT

DIVISION OF WATER RIGHTS
STATE WATER RESOURCES CONTROL BOARD

Subject Water Right Application
Robert & Judy Young

Division Personnel W Toy
Application Unit **29449**

Date 3/17/89 Time 1500
Personal Where WR
Telephone Number _____

Individual(s)/Agency Contacted Thomas BIRMINGHAM, with Moskowitz,
Tiedemann & Girard - Agent

Conversation Description Mr Birmingham submit the Young Application
where I did a preliminary review. I informed him that
if the hydroelectric generation is a continuous system and
not incidental with the other consumptive uses, then
it will conflict with the code. I explained that before
we accept the application, your client will have to
select which will be the purpose, consumptive or
nonconsumptive. If for power, it will be subject to
AB2440 and the \$1000⁰⁰ deposit, should they require
all the uses, a second application will be deemed necessary

Mr Birmingham indicated that there was a conflict
over the water (see K. Beig's) and their client has 1914
appropriation and the filing is to cover the right

Decision(s) _____

Action Items Advise the agent that we could
receive it as two application and
one fee submitted and have them
choose where the money goes

SURNAME				
---------	--	--	--	--

A29449
File

PROGRAM TASK REQUEST

Task # 594-49

Type of Action Requested

Addition Change of Task Title
 Deletion Change of Task Description

Task Number: _____ New Task Number Requested: 594-49

Task Title: (40 characters) SH# 89 A29449 - Robert E. Young & Mary Judith Young
(Applicant)

Task Description or Reason for Addition/Deletion:

Small Hydroelectric Application processing costs incurred by the Board will be reimbursed by the applicant in accordance with Water Code Section 1525.5 (AB 2440 which was signed into law on September 27, 1982). The Board shall reimburse the Department of Fish and Game for its actual costs incurred in evaluating this application from charges to the applicant.

The application number of this filing can be determined by replacing the first character (5) of the task number with a two (2). Example - Task number of 575-34 has an application number of 27534.

Effective Date of Task: 3-27-89
Termination Date of Task: 90 days after issuance of permit
Program Change Proposal Number N/A Attached Yes No
Regions Affected N/A 1 2 3 4 5 6 7 8 9
Divisions Affected Exec OLPA Legal WQ WR CWG DAS

/s/ Roger E. Dupuis 4-24-89 Water Rights
Requestor - Date Region/Division

FOR FISCAL USE ONLY

Set up new FY Change of Funding Source New Legislation

Classification: Program _____ Element _____ Component _____

Funding: Fund Number _____
Approp. Symbol _____
Reimbursement Y/N _____
CALSTARS Project # _____
Percent _____

Section 28/BR/Chapter/Item Number _____

Method of Payment: Direct Allocated (Clearing Account)

/s/
Accounting Office - Date

/s/
Budget Manager - Date

/s/
Budget Analyst - Date

/s/
Fiscal Branch Chief - Date

New Application

WR-4

Name Robert E & Mary Judith Lanning

Application Received by: Mail O.C. From Applicant Agent ✓ Other

Date Rec'd: 3-17-89 Maps Submitted: Engr. Appl. x Maps Due: Engr. Appl.

Fee Rec'd: \$ 100.00 Accept: x Uncl: Return:

Fee Total: \$ 1000- Application Returned:

Fee Due: \$ 900- Application Resubmitted:

Stream Code: 1-019-04-00-0 Map Code: B7 Quad Name SOMES BAR Series (7.5') or 75'

In Adjudicated Area? No Calif. Coordinates: 785,300'N, 1,586,000' E

Zone: 1

MINIMUM FILING FEE: \$100.00
FILE ORIGINAL & ONE COPY
TYPE OR PRINT IN BLACK INK
(For explanation of entries required, see booklet "How to File an Application to Appropriate Water in California")

STATE OF CALIFORNIA
State Water Resources Control Board
DIVISION OF WATER RIGHTS
901 P Street, Sacramento
P. O. Box 2000, Sacramento, CA 95810

STATE WATER RESOURCES CONTROL BOARD

1989 MAR 27 PM 4: 25

(Check one box only) APPLICATION TO APPROPRIATE WATER BY PERMIT DIV. OF WATER RIGHTS SACRAMENTO
or
 REGISTRATION OF SMALL DOMESTIC USE APPROPRIATION

(If this form is used to register a small domestic use appropriation, the terms "application" and "applicant" herein, and in related forms, shall mean "registration" and "registrant".)

Application No. 29449
(Leave blank)

1. APPLICANT

ROBERT E. & MARY JUDITH YOUNG (Name of applicant) (916) 469-3322 (Telephone number where you may be reached between 8 a. m. and 5 p. m. - include area code)
YOUNG'S RANCH
SOMES BAR CALIFORNIA 95568
(Mailing address) (City or town) (State) (Zip code)

2. SOURCE

a. The name of the source at the point of diversion is STANSHAW CREEK
(If unnamed, state that it is an unnamed stream, spring, etc.)
tributary to KLAMATH RIVER, THENCE PACIFIC OCEAN
b. In a normal year does the stream dry up at any point downstream from your project? YES NO If yes, during what months is it usually dry? From _____ to _____
What alternate sources are available to your project should a portion of your requested direct diversion season be excluded because of a dry stream or nonavailability of water? NONE

3. POINTS of DIVERSION and REDIVERSION

a. The point(s) of diversion will be in the County of SISKIYOU

List all points giving coordinate distances from section corner or other tie as allowed by Board regulations i. e. California Coordinate System	Point is within (40-acre subdivision)	Section	Township	Range	Base and Meridian
2500 ft. W, 1500 fts NE Corner	SW 1/4 of NE 1/4	33	13N	6E	H
785,300' W, 1589300' E	1/4 of 1/4				
CA COORD. ZONE 1	1/4 of 1/4				

c. Does applicant own the land at the point of diversion? YES NO
d. If applicant does not own the land at point of diversion, state name and address of owner and what steps have been taken to obtain right of access: Applicant has a recorded easement, U.S. Forest Service, Somes Bar, California

4. PURPOSE of USE, AMOUNT and SEASON

a. In the table below, state the purpose(s) for which water is to be appropriated, the quantities of water for each purpose, and the dates between which diversions will be made. Use gallons per day if rate is less than 0.025 cubic foot per second (approximately 16,000 gallons per day). Purpose must only be "Domestic" for registration of small domestic use.*

PURPOSE OF USE (Irrigation, Domestic, etc.)	DIRECT DIVERSION				STORAGE		
	QUANTITY		SEASON OF DIVERSION		AMOUNT	COLLECTION SEASON	
	RATE (Cubic feet per second or gallons per day)	AMOUNT (Acre-feet per year)	Beginning Date (Mo. & Day)	Ending date (Mo. & Day)	Acre-feet per annum	Beginning Date (Mo. & Day)	Ending date (Mo. & Day)
Hydroelectric	3.0 cfs	2168.1	1/1	12/31			
Fish Enhancement	1.0 cfs	722.7	1/1	12/31			
		2890.8	TOTAL AMOUNT			TOTAL AMOUNT	

b. Total combined amount taken by direct diversion and storage during any one year will be 2890.8 acre-feet.

* Not to exceed 4,500 gallons per day by direct diversion or 10 acre-feet per annum by storage.

Per 4-13-83 letter KLM

3-17-89 \$100.00 JW

5. JUSTIFICATION OF AMOUNT (For small domestic use registration, complete item b. only)

a. IRRIGATION: Maximum area to be irrigated in any one year is _____ acres.

CROP	ACRES	METHOD OF IRRIGATION (Sprinklers, flooding, etc.)	ACRE-FEET PER YEAR	NORMAL SEASON	
				Beginning date	Ending date

b. DOMESTIC: Number of residences to be served is _____. Separately owned? YES NO
 Total number of people to be served is _____. Estimated daily use per person is _____ (Gallons per day)
 Total area of domestic lawns and gardens is _____ square feet.
 Incidental domestic uses are _____
 (Dust control area, number and kind of domestic animals, etc.)

c. STOCKWATERING: Kind of stock _____ Maximum number _____ Describe type of operation: _____
 (Feed lot, dairy, range, etc.)

d. RECREATIONAL: Type of recreation: Fishing Swimming Boating Other

e. MUNICIPAL: (Estimated projected use)

POPULATION 5-year periods until use is completed		MAXIMUM MONTH		ANNUAL USE		
PERIOD	POP.	Average daily use per capita (gal.)	Rate of diversion (cfs)	Average daily use (gal. per capita)	Acre-foot (per capita)	Total acre-feet
Present						

Month of maximum use during year is _____. Month of minimum use during year is _____.

f. HEAT CONTROL: The total area to be heat protected is _____ net acres.
 Type of crop protected is _____
 Rate at which water is applied to use is _____ gpm per acre.
 The heat protection season will begin about _____ and end about _____
 (Date) (Date)

g. FROST PROTECTION: The total area to be frost protected is _____ net acres.
 Type of crop protected is _____
 Rate at which water is applied to use is _____ gpm per acre.
 The frost protection season will begin about _____ and end about _____
 (Date) (Date)

h. INDUSTRIAL: Type of industry is _____
 Basis for determination of amount of water needed is _____

i. MINING: The name of the claim is _____. Patented Unpatented
 The nature of the mine is _____. Mineral to be mined is _____
 Type of milling or processing is _____
 After use, the water will be discharged into _____
 (Name of stream)
 in _____ 1/4 of _____ 1/4 of Section _____, T _____, R _____, _____ B. & M.
 (40-acre subdivision)

j. POWER: The total fall to be utilized is 200 feet. The maximum amount of water to be used through the penstock is 2.5 cubic feet per second. The maximum theoretical horsepower capable of being generated by the works is 56.8. Electrical capacity is 33.9 kilowatts at .80 % efficiency.
 (Cubic feet per second x fall ÷ 8.8) (Hp x 0.746 x efficiency)
 After use, the water will be discharged into Irving Creek
 (Name of stream)
 in NW 1/4 of NE 1/4 of Section 4, T 12N, R 6E, H _____ B. & M. FERC No. NONE
 (40-acre subdivision)

k. FISH AND WILDLIFE PRESERVATION AND/OR ENHANCEMENT: YES NO If yes, list specific species and habitat type that will be preserved or enhanced in item 17 of Environmental Information form WR 1-2.

l. OTHER: Describe use: _____ Basis for determination of amount of water needed is _____

6. PLACE OF USE

- a. Does applicant own the land where the water will be used? YES NO Is land in joint ownership? YES NO
 (All joint owners should include their names as applicants and sign the application.)
 If applicant does not own land where the water will be used, give name and address of owner and state what arrangements have been made with the owner.

b.

USE IS WITHIN (40-acre subdivision)	SECTION <u>projected</u>	TOWNSHIP	RANGE	BASE & MERIDIAN	IF IRRIGATED	
					Number of acres	Presently cultivated (Y/N)
SW 1/4 of SE 1/4	33	13N	6E	Humboldt		
SE 1/4 of SW 1/4	33	13N	6E	Humboldt		
NE 1/4 of SW 1/4	33	13N	6E	Humboldt		
NW 1/4 of SW 1/4	33	13N	6E	Humboldt		
SW 1/4 of SW 1/4	33	13N	6E	Humboldt		
NE 1/4 of SE 1/4	32	13N	6E	Humboldt		

(If area is unsurveyed, state the location as if lines of the public land survey were projected, or contact the Division of Water Rights. If space does not permit listing all 40-acre tracts, include on another sheet or state sections, townships and ranges, and show detail on map.)

7. DIVERSION WORKS

- a. Diversion will be by gravity by means of FLUMES AND PIPE
 (Dam, pipe in unobstructed channel, pipe through dam, siphon, weir, gate, etc.)
- b. Diversion will be by pumping from _____ Pump discharge rate _____ Horsepower _____
 (Sump, offset well, channel, reservoir, etc.) (cfs or gpd)
- c. Conduit from diversion point to first lateral or to offstream storage reservoir:

CONDUIT (Pipe or channel)	MATERIAL (Type of pipe or channel lining) (Indicate if pipe is buried or not)	CROSS SECTIONAL DIMENSION (Pipe diameter or ditch depth and top and bottom width)	LENGTH (Feet)	TOTAL LIFT OR FALL		CAPACITY (Estimate)
				Feet	+ or -	
Channel	Earthen	12" in. deep 24" in. wide	5,200'	40'	10'	3.2 cfs
Pipe	Steel (not buried)	16" in. diameter	455'	200'	1'	3.2 cfs

- d. Storage reservoirs: (For underground storage, complete Supplement 1 to WR1, available upon request.)

Name or number of reservoir, if any	DAM				RESERVOIR		
	Vertical height from downstream toe of slope to spillway level (ft.)	Construction material	Dam length (ft.)	Freeboard Dam height above spillway crest (ft.)	Approximate surface area when full (acres)	Approximate capacity (acre-feet)	Maximum water depth (ft.)

- e. Outlet pipe: (For storage reservoirs having a capacity of 10 acre-feet or more.)

Diameter of outlet pipe (inches)	Length of outlet pipe (feet)	FALL (Vertical distance between entrance and exit of outlet pipe in feet)	HEAD (Vertical distance from spillway to outlet pipe in reservoir in feet)	Estimated storage below outlet pipe entrance (dead storage)

- f. If water will be stored and the reservoir is not at the point of diversion, the maximum rate of diversion to offstream storage will be _____ cfs. Diversion to offstream storage will be made by: Pumping Gravity

8. COMPLETION SCHEDULE

- a. Year work will start NOT APPLICABLE b. Year work will be completed _____
 c. Year water will be used to the full extent intended _____ d. If completed, year of first use _____

9. GENERAL

a. Name of the post office most used by those living near the proposed point of diversion is SOMES BAR, CALIFORNIA

b. Does any part of the place of use comprise a subdivision on file with the State Department of Real Estate? YES NO

If yes, state name of the subdivision _____

If no, is subdivision of these lands contemplated? YES NO

Is it planned to individually meter each service connection? YES NO If yes, When? _____

c. List the names and addresses of diverters of water from the source of supply downstream from the proposed point of diversion: _____

d. Is the source used for navigation, including use by pleasure boats, for a significant part of each year at the point of diversion, or does the source substantially contribute to a waterway which is used for navigation, including use by pleasure boats? YES NO If yes, explain: THE SOURCE CONTRIBUTES TO THE KLAMATH RIVER

WHICH IS USED BY PLEASURE BOATS.

10. EXISTING WATER RIGHT

Do you claim an existing right for the use of all or part of the water sought by this application? YES NO

If yes, complete table below:

Nature of Right (riparian, appropriative, groundwater.)	Year of First Use	Purpose of use made in recent years including amount, if known	Season of Use	Source	Location of Point of Diversion
Pre-1914 appropriative	1867	Domestic, Irrigation Hydroelectric generation	Year- round	Stanshaw Creek	same as 3b above

11. AUTHORIZED AGENT (Optional)

With respect to all matters concerning this water right application those matters designated as follows:

<u>THOMAS W. BIRMINGHAM</u>	<u>(916) 444 - 8920</u>
(Name of agent)	(Telephone number of agent between 8 a. m. and 5 p. m.)
<u>770 L Street, Suite 1200 Sacramento</u>	<u>California 95814</u>
(Mailing address)	(City or town) (State) (Zip code)

is authorized to act on my behalf as my agent.

12. SIGNATURE OF APPLICANT

I (we) declare under penalty of perjury that the above is true and correct to the best of my (our) knowledge and belief.
Dated March 17 1989, at Sacramento, California

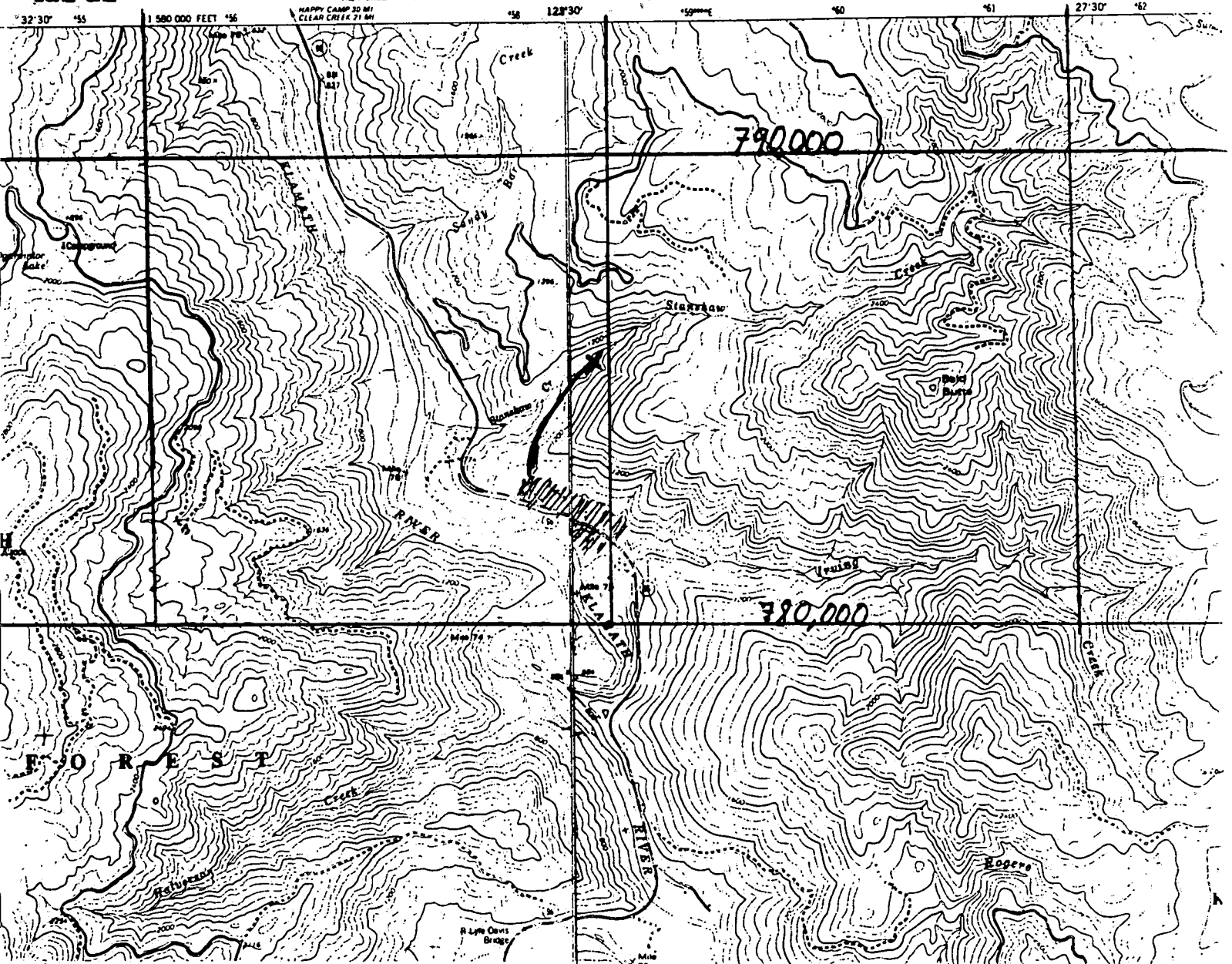
(If there is more than one owner of the project, please indicate their relationship.)

Ms. Mr.
Miss. Mrs. *Thomas W. Birmingham*
(Signature of applicant)
THOMAS W. BIRMINGHAM, ESQ.
For Applicants
Ms. Mr.
Miss. Mrs. _____
(Signature of applicant)

Additional information needed for preparation of this application may be found in the Instruction Booklet entitled "HOW TO FILE AN APPLICATION TO APPROPRIATE WATER IN CALIFORNIA". If there is insufficient space for answers in this form, attach extra sheets. Please cross-reference all remarks to the numbered item of the application to which they may refer. Send original application and one copy to the STATE WATER RESOURCES CONTROL BOARD, DIVISION OF WATER RIGHTS, P. O. Box 2000, Sacramento, CA 95810, with \$100 minimum filing fee.

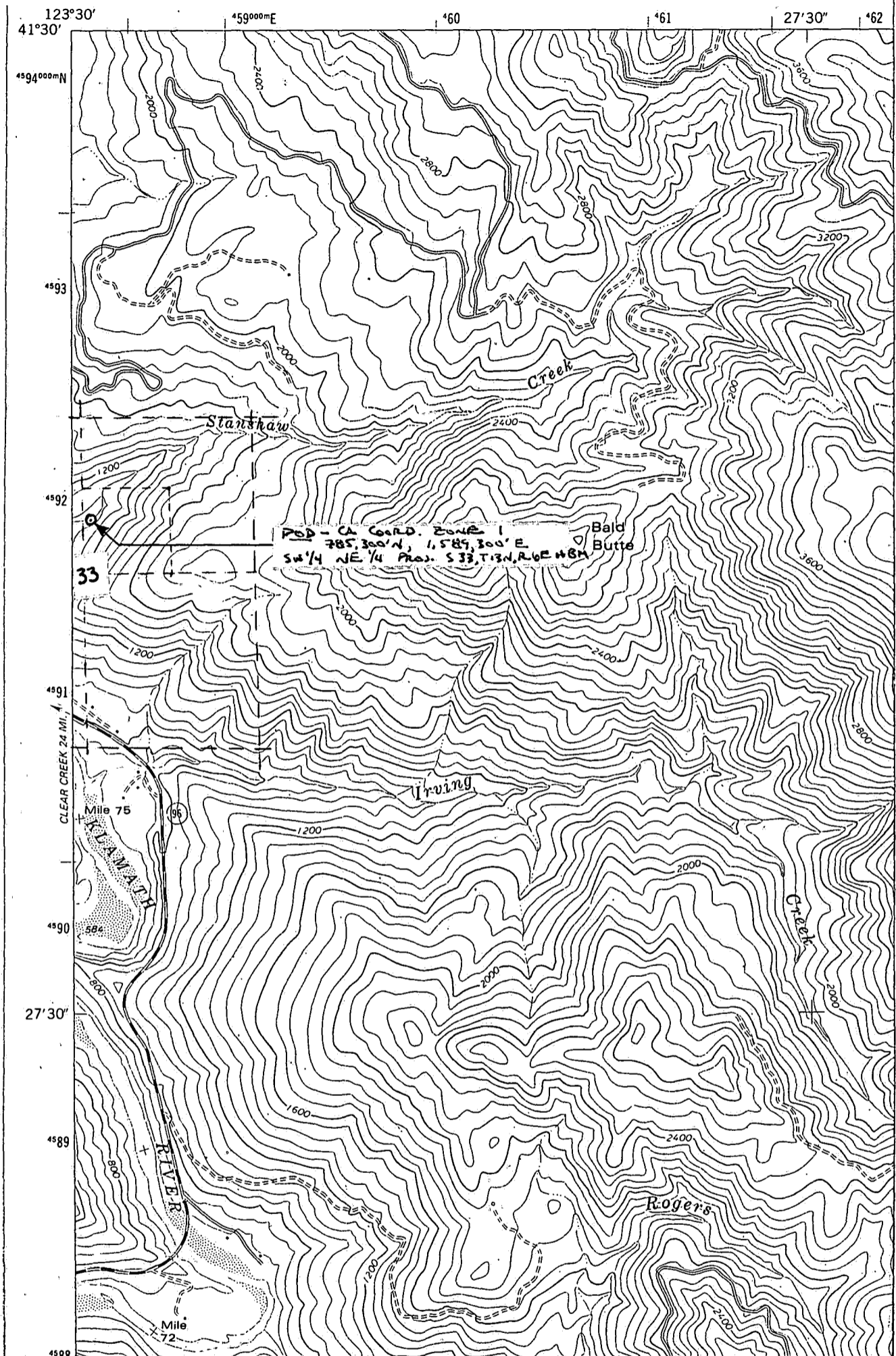
NOTE:

If this application is approved for a permit, a minimum permit fee of \$100 will be required before the permit is issued. There is no additional fee for registration of small domestic use.



Approximate point of diversion,
Approximate course of conveyance, and
Approximate place of use.

This information is based on a verbal description from the Applicants; a more detailed map will be filed within 30 days of the date of this Application.



APPLICANT ROBERT E & MARY
JUDITH YOUNG
 DIVERSION WITHIN SW 1/4 NE 1/4 OF
 SECTION 33, T. 13N, R. 6E, H. B&M
 COUNTY OF SISKIYOU
 U.S.G.S. Quad SOMES BAR Map Code B7
 Scale 1:24000 Contour Interval

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

APPLICATION 29449
 PERMIT
 LICENSE

DATE: DRAWN BY:

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
901 P Street, Sacramento
P. O. Box 2000, Sacramento, CA 95810

APPLICATION TO APPROPRIATE WATER
ENVIRONMENTAL INFORMATION

(THIS IS NOT A CEQA DOCUMENT)

APPLICATION NO. **29449**
(leave blank)

The following information will aid in the environmental review of your application as required by the California Environmental Quality Act (CEQA). IN ORDER FOR YOUR APPLICATION TO BE ACCEPTED AS COMPLETE, ANSWERS TO THE QUESTIONS LISTED BELOW MUST BE COMPLETED TO THE BEST OF YOUR ABILITY. Failure to answer all questions may result in your application being returned to you, causing delays in processing. If you need more space, attach additional sheets. Additional information may be required from you to amplify further or clarify the information requested in this form.

PROJECT DESCRIPTION

1. Provide a brief description of your project, including but not limited to type of construction activity, structures existing or to be built, area to be graded or excavated and project operation.

Applicants operate a resort near the Klamath River in Somes Bar, County of Siskiyou. Applicants claim a pre-1914 appropriative right to divert and use the flow of Stanshaw Creek. Currently, water is diverted from Stanshaw Creek and conveyed through a flume to the Applicants' property. Applicants currently operate a small hydroelectric project for generation of electricity needed in the operation of their resort. In addition to using the appropriated water for domestic and hydroelectric generation use, water is used to irrigate approximately 7.0 acres of alfalfa and, through an agreement with the Department of Fish and Game, for fish enhancement. After reasonable, beneficial use on Applicants' property, water flows from the property into Irving Creek and thence the Klamath River.

GOVERNMENTAL REQUIREMENTS

Before a final decision can be made on your water right application, we must consider the information contained in an environmental document prepared in compliance with the requirements of CEQA. If an environmental document has been prepared for your project by another agency, we must consider it. If one has not been prepared, a determination must be made as to who is responsible for the preparation of the environmental document for your project. The following questions are to aid us in that determination.

2. Contact your county planning or public works department for the following information:

(a) Assessor's Parcel No. _____

(b) County Zoning Designation Rural Residential

(c) Will the county have to issue any permits or approvals for your project? No If yes, check appropriate spaces below:

_____ Grading Permit, _____ Use Permit, _____ Watercourse Obstruction Permit, _____ Change of Zoning, _____ General Plan Change, _____ Other: _____

(d) If any permits have been obtained list permit type and permit number: _____

(e) Person contacted Marty Taylor Date of contact 3/14/89

Department Planning Department Telephone (916) 842-8200

3. Are any additional state or federal permits required for your project? (i.e., Federal Energy Regulatory Commission, U.S. Forest Service, Bureau of Land Management, Soil Conservation Service, Department of Water Resources (Division of Dam Safety), Reclamation Board, Coastal Commission, State Lands Commission, etc.)

For each agency from which a permit is required provide the following information:

Permit type None required

Person contacted _____ Agency _____

Date of contact _____ Telephone () _____

4. Has your agency, if it is a public agency, or any permitting agency prepared any environmental documents for your project? _____

If so, you must submit a copy of the latest environmental document with this application, including a copy of the notice of determination.

If not, will any environmental documents be prepared by any permitting agency, or will you be preparing environmental documents for your project? _____ If so, explain: _____

Note: When completed, the final environmental document (including notice of determination) or notice of exemption must be submitted to the Board. Processing of your water right application cannot proceed until such documents are submitted.

5. Will your project, during construction or operation, generate waste or wastewater containing such things as sewage, industrial chemicals, metals, or agricultural chemicals, or cause erosion, turbidity or sedimentation? No If so, explain: _____

If you answered yes or you are unsure of your answer, contact your local Regional Water Quality Control Board for the following information (See attachment for address and telephone number):

Will a waste discharge permit be required for your project? _____

Person contacted _____ Date of contact _____

What method of treatment and disposal will be used? _____

6. Have any archeological reports been prepared on this project, or will you be preparing an archeological report to satisfy another public agency? No

Do you know of any archeological or historic sites located within the general project area? _____ If so, explain: _____

ENVIRONMENTAL SETTING

7(a) Describe the current land use of the area at the point of water diversion, immediately downstream of the diversion, and at the place where the water is to be used. Attach photographs of these areas. Date and label photos.

Point of diversion: The point of diversion is on land owned by the United States Forest Service and is open space.

Downstream of diversion: same

Place of use: resort and agriculture

(b) Describe the types of existing vegetation at the point of diversion, immediately downstream of the point of diversion, and at the place where the water is to be used. These vegetation types should be shown in the photographs submitted.

Point of diversion: unknown

Downstream of diversion: unknown

Place of Use: unknown

8. What changes in the project site and surrounding area will occur or are likely to occur because of construction and operation of your project? Include in your answer such things as approximate number and size/age of trees to be removed or areas of vegetation/brush removal; area or extent of streambed alteration, trenching, grading, excavation, plowing, or road, dam or building construction; etc. Consider all aspects of your project, including diversion structure, pipelines or ditches, water use, and changes at the place of use.

FISH AND WILDLIFE CONCERNS

Contact your regional office of the State Department of Fish and Game (DFG) to obtain the information requested in questions 9 through 17 (see page 6 for address and telephone number):

9. Person contacted Dave Hoopaugh
Date of contact 3/15/89 Telephone (916) 225-2373

10. According to the DFG representative, when did or when will a DFG representative visit the project site area? Not needed

What is the name of the DFG representative who made or will make the inspection of the project site area? _____

11. According to the DFG representative, will this project require a Streambed Alteration Agreement? No

12. According to the DFG representative, do any resident or migratory game or non-game fish species occur in the affected stream? Yes
If so, what species? Steelhead, resident trout

What season of the year do they occur in the stream? Year-round

13. According to the DFG representative, do any plants or animals which are (1) federally identified as candidate, threatened, or endangered; (2) state listed as rare, threatened, or endangered; or (3) listed by the DFG Natural Diversity Data Base, occur in the project area? No

Will they be impacted in any way by the project? No
If so, identify the species and explain how they will be impacted:

14. Does the DFG representative expect that your project will have an adverse effect on any resident or migratory fish populations, any wildlife populations, or any rare or endangered plant or animal species? Yes If so, explain: If all flow is diverted from the stream.

15. What measures relating to your project have been proposed by the DFG representative to protect fish, wildlife or endangered or rare species: Minimum fish flows.

16. Will you make changes in your project as recommended by DFG? _____

If not, explain: _____

17. If your application lists wildlife enhancement as a proposed use, what specific species or habitat type will be enhanced? _____
Steelhead

According to the DFG representative, does your proposed project utilize a sound technique for the purpose of wildlife enhancement?
Yes

EXISTING STORAGE OR DIVERSIONS

If you currently have an interest in any other water projects which store or divert water and this application requests additional water from the same watershed, answer the following additional question for each project:

18. Does the project have fish and wildlife protection requirements? _____
If so, list the permit number and specific protection requirements for each project: _____

CERTIFICATION

I hereby certify that the statements I have furnished above and in the attached exhibits are complete to the best of my ability, and that the facts, statements, and information presented are true and correct to the best of my knowledge.

Date March 17, 1989 Signature *Thomas W. Birmingham*

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME

★ **CENTRAL OFFICE**
1416 Ninth Street
Sacramento, CA 95814
Information: (916) 445-3531

• **REGIONAL OFFICES**

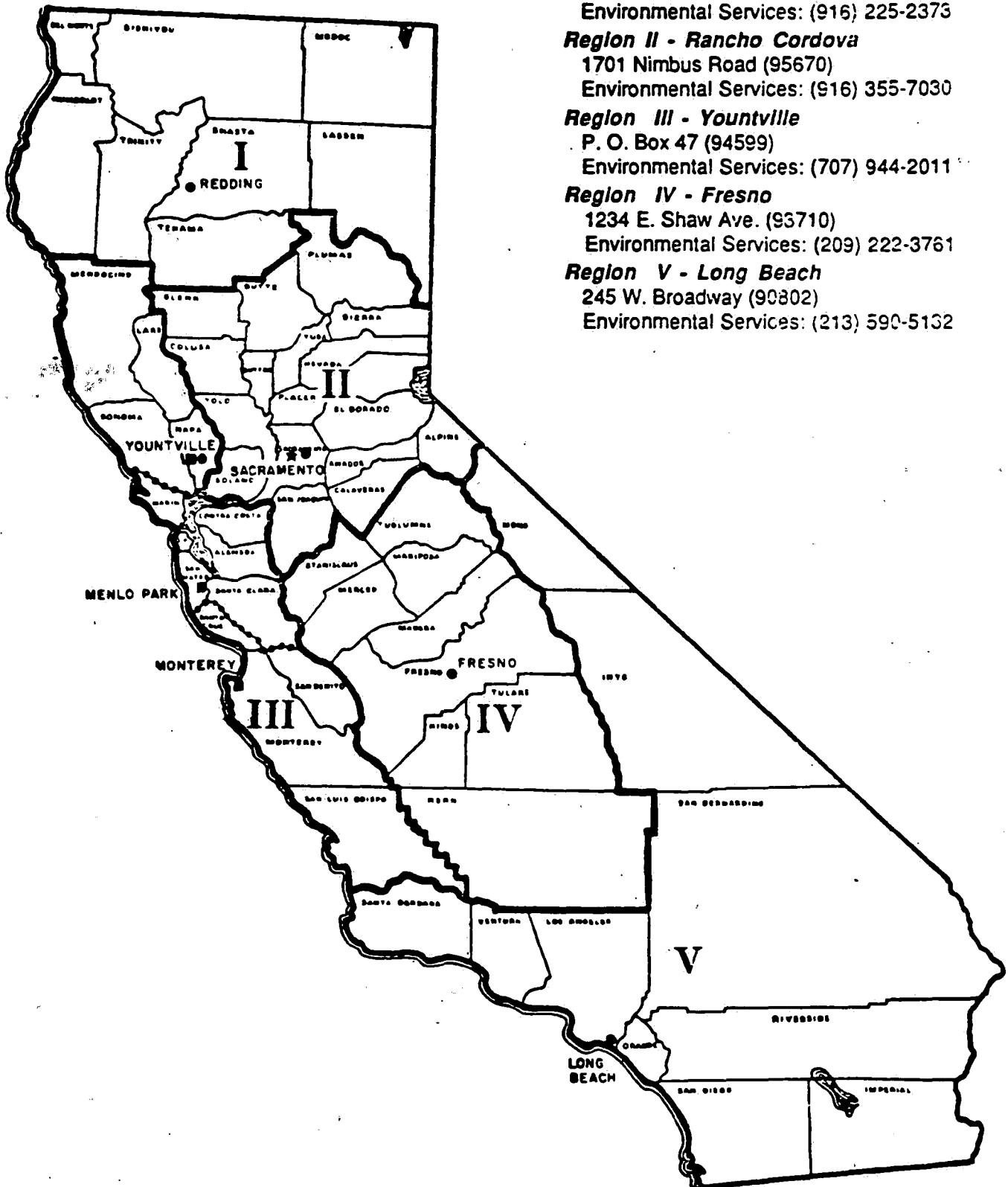
Region I - Redding
P. O. Box 1480
601 Locust Street (96001)
Environmental Services: (916) 225-2373

Region II - Rancho Cordova
1701 Nimbus Road (95670)
Environmental Services: (916) 355-7030

Region III - Yountville
P. O. Box 47 (94599)
Environmental Services: (707) 944-2011

Region IV - Fresno
1234 E. Shaw Ave. (93710)
Environmental Services: (209) 222-3761

Region V - Long Beach
245 W. Broadway (90802)
Environmental Services: (213) 590-5132



ATTACHMENT A

Three residences
Forty-four recreational vehicle hook-ups
Eleven housekeeping units
Fourteen mobile homes
One lodge

A B 2440 ROUTE SHEET

29449

1/86

Application _____
Date Accepted _____
Applicant _____

Target - Initials - Complete

1. _____
Date - EAU - Date

Project (will)(will not) cause a change in the flow regime. Lead agency will be

Chief, EAU Initials _____ Date _____

2. _____
Date - EAU - Date

Send mailing list and lead agency designation to applicant, advise applicant if IBUA is required and need for IBUA scope of work plan (within 30 days of acceptance of application). If IBUA is not required, skip to Step 6.

3. _____
Date - EAU - Date

Determine if IBUA scope of work plan is adequate and advise applicant, or schedule scoping meeting/session.

4. _____
Date - EAU - Date

IBUA received (target date) and mailed to interested parties (complete date 7 days after target).

5. _____
Date - EAU - Date

Determine if IBUA is adequate by 90 days after receipt.

6. _____
Date - Coord. - Date

Notice Water Right Application immediately upon approval of IBUA or determination of no flow regime change provided application complete. (The one-year time limit starts when IBUA is approved and application complete.)

7. _____
Date - Hearings - Date

Initiate Hearing calendar 90 days after notice.

8. _____
Date - EAU - Date

Circulate CEQA document by 150 days after notice.

9. _____
Date - Hearings - Date

Resolve protests or issue notice of hearing 150 days after notice.

10. _____
Date - Hearings - Date

Conduct hearing (if all protests resolved, complete environmental document and skip to Item 15).

11. _____
Date - Hearings - Date

Complete CEQA document, staff analysis and draft decision by not more than 60 days after hearing.

CEQA document complete Initials _____ Date _____
Staff Analysis _____
Draft decision _____

12. _____
Date - Hearings - Date

PreWorkshop _____

13. _____
Date - Hearings - Date

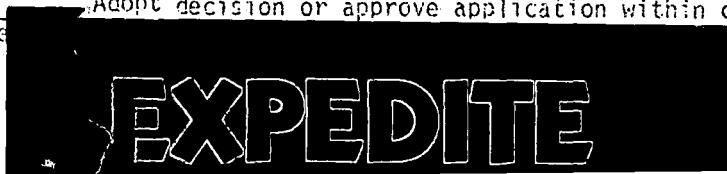
Board Workshop _____

14. _____
Date - Hearings - Date

Board Meeting _____

15. _____
Date - Hearings - Date

Adopt decision or approve application within one year.



SMALL HYDROELECTRIC APPLICATION 29449 OF _____
 TO APPROPRIATE WATER FROM _____ IN
 _____ COUNTY (FERC NO. _____)

Enclosed is a copy of a new AB2440-type water right application for a small hydroelectric facility in your region. The project is subject to the provisions of Water Code Sections 1250.5 and 1525.5. Therefore, the Department of Fish and Game is entitled to reimbursement of the actual costs incurred in evaluating this application and any associated Instream Beneficial Use Assessment (IEUA). Please reference this application number and the date(s) when expenses that are chargeable pursuant to AB2440 are incurred.

I will be in touch with you by phone in a few days to discuss any stream flow regime change caused by the project, any previous involvement you may have had with the project, and the need for the applicant to develop a formal written "IEUA Scope of Work Plan" in cooperation with our respective offices. A "Scoping Session" may be needed to identify issues and concerns of the various agencies and interested parties, and to identify any additional studies required of the applicant.

We believe it is essential to identify California Environmental Quality Act (CEQA) and other agency requirements early in the review process in order to eliminate duplication of effort and expedite evaluation and processing of this water right application.

If you have any questions on this project, please call me at (916) 324-_____
 (ATSS 454-_____).

Environmental Specialist

cc: John Turner
 Department of Fish and Game, ESB
 Resources Bldg. Rm. 115
 Sacramento, CA 95814

cc: (to applicant)

Noel Folsom
 FERC Regional Office
 333 Market Street, 5th Floor
 San Francisco, CA 94105

cc: (to county, if appropriate)

Application Engineer
 Water Rights