

EFgin 1/3/04

Blue Heron do they have beneficial use over time

Can't find any project that's unlawful

Above unobstructed waters, may do without a screen

Coles. Do maintenance of grantstream Coles: rights on S land.

Mr. Michael Contreras
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, California 95812-2000

Dear Mr. Contreras:

Thank you for extending the comment period for your letter in regards to your investigation into water rights complaint submitted by the Klamath Forest Alliance alleging unreasonable diversion.

The National Marine Fisheries Service is surprised that SWRCB Complaints Unit has not fully considered the comments by either NMFS or the California Department of Fish and Game (CDFG) in this case. We are forced to disagree with the SWRCB Complaint Unit's conclusions.

NMFS has not been presented any evidence that the Coles have pre-1914 water rights for domestic, irrigation, and hydroelectric generation. It is our understanding that only 0.11 cfs has been used historically, whereas 3 cfs is required for hydroelectric generation. If this is not the case, NMFS requests that documentation.

instantaneous flow Young's Ranch summer flow the ditch

The SWRCB bypass flow of 0.7 cubic feet per second (cfs) is based solely on a single measurement of the stream at the time of the site visit last October. It therefore does not account for long term stream discharge pattern of Stanshaw Creek and is clearly inadequate. While Stanshaw Creek is not gaged, its flow magnitude, frequency, duration, and timing can be estimated by prorating by area a nearby gaged stream. Margaret Tauzer of NMFS Arcata has estimated the median, minimum, and average flows in cfs of Stanshaw Creek during August, September, and October (the driest months) based upon prorated estimates from the USGS gage records of Ti Creek. They are:

	August	September	October
Median	2.99	2.58	3.05
Minimum	2.58	2.04	1.02
Average	3.16	2.63	4.09

Change of Materials can be challenged



WR-54
UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
777 Sonoma Avenue, Room 325
Santa Rosa, California 95404

In Response Refer To:
July 8, 2002 151416-SWR-02-SR-6338:SKL

- 1/4/04
- potentially enclosed pipe
- No diminishing
- Fish screen is a maintenance issue
- Seen 2 fish over 10 years.
- Any structural
- Argue loss of habitat



In addition to inadequate bypass flows, the SWRCB complaint unit's proposed conditions do not protect federally listed species. First, there is no provision to return the diverted flow back to Stanshaw Creek. Without these flows, the summer thermal refuge at the mouth of Stanshaw Creek will warm sooner and be warmer, degrading its value to juvenile coho salmon. These degraded conditions increase the likelihood of take of a federally listed species. The Coles verbally offered to return flows to Stanshaw Creek during the field site visit, so NMFS does not understand why this provision is not included. NMFS' bypass recommendation was contingent upon returning diverted flow to Stanshaw Creek to maintain the thermal refuge at its mouth. Therefore, we reiterate our recommendation to return diverted flow back to Stanshaw Creek.

The SWRCB Complaints Unit proposed solution also does not mention adequate fish screening at the point of diversion (POD) to prevent entrainment of fish. Adequate fish screening was included as conditions to remove our protest.

Finally, NMFS does not see how visual estimation of flow in the creek can be implemented as a condition. This would make any monitoring or compliance meaningless.

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. Stacy K. Li at (707) 575-6082.

Be sure apply for Salmon Restoration funds Leah Matham
Sincerely, *707-575-6077*

James R. Bybee

James R. Bybee
Habitat Manager
Northern California

- cc: Doug and Heidi Cole
- Margaret Tauzer, PRD, NMFS, Arcata *825-5174 Primary NMFS contact*
- Tim Broadman, Law Enforcement, NMFS, Arcata
- Ron Prestly, CDFG, Redding
- William Heitler, USFS
- Jim De Pree, Siskiyou County Planning Department
- Konrad Fisher
- Karuk Tribe of California

F. Davis
Don Mooney Ph# 530-758-2377 call

Gary Black # -
self-cleaning headgate
... Salmon ... small drains