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# Karuk Tribe



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January 26, 2015

Taro Murano, Senior Environmental Scientist  
Enforcement Unit 5, Division of Water Rights  
State Water Resources Control Board  
1001 I Street, 14<sup>th</sup> Floor  
Sacramento, CA 95814

### **Re: Draft Marble Mountain Ranch Stanshaw Creek Water Rights Determination**

Ayukii Mr. Murano:

Thank you for the opportunity to provide comments on the State Water Board's evaluation of Doug Cole's water right claim on Stanshaw Creek. The Karuk Tribe is a federally recognized Indian Tribe with a population of approximately 3,700 members. The Karuk Tribe has lived in northern California since time immemorial and our ancestors are considered among the earliest inhabitants of aboriginal California. Stanshaw Creek is located in the heart of Karuk aboriginal territory and is that is the reason for our interest in this matter.

### **Background**

Stanshaw Creek is a tributary of the Klamath River. Its confluence with the Klamath is approximately 7.8 river miles north of Ishi Pishi Falls in Siskiyou County California. Stanshaw Creek originates from snowpack in the Marble Mountains and the creek is approximately 3 miles long.

The Stanshaw Creek diversion operated by Doug Cole is located 4,000 horizontal feet east of Highway 96 and over 400 vertical feet above the highway on Klamath National Forest Service land. Stanshaw Creek has a short but significant section of coho habitat below the Hwy 96 crossing.

Coho in the Klamath River are part of the Southern Oregon Northern California Coast (SONCC) evolutionarily significant unit (ESU). SONCC coho are listed as *threatened* under the California and the United States Endangered Species Act.

Near the mouth of Stanshaw Creek, where it meets the Klamath River, there is a large side channel pool used by hundreds if not thousands of over-summering coho salmon each year. The pool is significantly cooler than the Klamath River in the summer and thus it is imperative for the pool to remain connected to the Klamath River to allow fish an opportunity to move back and forth to survive warm summer temperatures in the main stem Klamath. This connectivity between the Stanshaw Creek pool and the Klamath River is dependent on adequate constant flow in to the Creek. The pool also serves over-

wintering coho in winter months. The optimal water temperatures and nutrient levels observed in this pool result in rapid growth rates, increased survival, and large numbers of returning adult spawners. Statements of Water Diversion and Use (SWDU) filed by the landowners with the State in recent years state that the diversion and associated ditch is capable of carrying 3 cubic feet of water per second (CFA) away from the Creek. Flow data by the Karuk Tribe and the US Forest Service show that diversions into the ditch often result in extremely low flows in the creek. This in turn results in the loss of connectivity between the cold water pond area at the mouth of Stanshaw with the Klamath River. This can deny fish in the river access into the pond area or trap fish in the pond where they can be subject to predation.

### **A minimum of 2.5 cfs should remain in Stanshaw Creek**

Attached to this letter is a detailed technical report prepared by Ross Taylor and Associates describing Stanshaw Creek coho habitat in greater detail. The report agrees with a previous assessment by California Department of Fish and Game (Koch 2001)<sup>1</sup> that the minimum flow of Stanshaw Creek necessary to maintain the side channel's connectivity to the Klamath River and thereby ensure adequate habitat for coho salmon.

### **Domestic and Irrigation Use of 0.35 CFS is not Supported by the Record**

According to a technical memorandum from Cascade Stream Solutions, the SWRCB previously estimated the Cole's domestic and irrigation use at 0.103 cfs. (Technical Memo at p. C9.) The report notes that Cole's predecessors (the Young's) conceded that their domestic and irrigation water needs were 0.11 cfs. The 2009 Statement of Diversion of Use signed and filed by Doug Cole estimated domestic and irrigation use to be 0.353 cfs. (Technical Memo at p. C9.) The ensuing Water Rights Report by Lennihan Law in collaboration with Cascade Stream Solutions then bases its conclusions that "the pre-1914 appropriative water right supports diversion and use of up to 0.35 cfs for domestic and irrigation" on Doug Cole's higher estimate rather than the more substantiated estimates of SWRCB and the Young's.

Thus, we do not believe the SWRCB can justifiably conclude that the Cole's have a right to 0.35 cfs for Domestic and Irrigation use.

### **A Conveyance Loss of 0.5 CFS is Wasteful and Unreasonable**

The Water Rights Report prepared by Lennihan Law excludes conveyance losses from the aforementioned estimates for domestic and irrigation water use. Given the value of the habitat Stanshaw Creek provides for ESA listed coho and the relatively cheap availability for piping, we assert that a conveyance loss of 0.5 cfs is wasteful and unreasonable. The existing unlined conveyance ditch is not only wasteful, but it washes out many winters creating mudslides that cause plumes of muddy water to enter the Klamath River from the mouth of Stanshaw Creek.

### **Cole's Diversion Violates Laws which Supersede Valid pre-1914 Water Rights**

There are several applicable laws that Cole's diversion violates. These include but are not limited to: the Public Trust Doctrine, the Reasonable Use Doctrine, the California and United States Endangered Species Acts, California Fish and Game Code section 1600, and California Fish and Game Code 5937.

### **Location of Return Flow**

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<sup>1</sup> Memorandum from Regional DFG Manager Don Koch to SWRCB Division of Water Rights Chief Edward C. Anton, November 20, 2001.

The portion of the diversion that is not consumptively used is returned to nearby Irving Creek, not Stanshaw Creek. Cole should be required to return diverted flows to the creek of origin.

The pre-1914 appropriative water right supports diversion and use of up to 0.35 cfs for domestic and irrigation.

### **Conclusion**

We appreciate the work of the SWRCB on this matter. We thank you for an opportunity to provide comments and appreciate your consideration of the information we have provided. Please feel encouraged to contact us if we may provide any additional information.

Yootva,

A handwritten signature in black ink, appearing to read "S. Craig Tucker". The signature is written in a cursive style with a prominent horizontal stroke at the end.

S. Craig Tucker, Ph.D.  
Natural Resources Policy Advocate