

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

Hayden Ranch, FLP

**ORDER APPROVING PETITION FOR CHANGES IN PURPOSE OF USE,
PLACE OF USE, AND DEDICATION OF INSTREAM FLOW
(WATER CODE 1707)**

ADJUDICATED WATER RIGHT J000012

SOURCE: Big Mill Creek tributary to East Fork Scott River

COUNTY: Siskiyou

WHEREAS:

1. Big Mill Creek is a tributary to the East Fork Scott River. Big Mill Creek water rights have been adjudicated and are described in the Scott River Stream System Decree No. 30662 (Decree). Hayden Ranch, FLP (Petitioner) diverts water from Big Mill Creek pursuant to the Decree at diversion number 69-16-B4 (POD 69).
2. On March 12, 2009, Petitioner filed a petition pursuant to Water Code Section 1707 with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) to change the purpose of use for a water right listed in the Decree by adding preservation and enhancement of fish and wildlife resources as a purpose of use and to change the place of use to include the reach within Big Mill Creek and East Fork Scott River downstream of POD 69. Petitioner proposes to place 12-inch diameter pipe in the existing earthen ditch to eliminate and/or reduce ditch losses and to change the irrigation method from flooding to pressurized irrigation to conserve water for instream beneficial uses. The estimated quantity remaining in Big Mill Creek as a result of these changes is 1.4 cfs.
3. The Decree authorizes a total allotment of 1.60 cubic foot per second (cfs) by direct diversion. Water is used for irrigation of 20 acres from about April 1 to about October 15 under: (a) a first priority right of 0.01 cfs, (b) a 2nd priority right of 1.19 cfs, (c) a 3rd priority right of 0.20 cfs, and (d) a surplus right of 0.20 cfs. The Petitioner asserts that water is also used for domestic and stockwatering purposes. (See Decree, para. 41 & 42.)
4. POD 69 on Big Mill Creek is listed in Schedule 2 of the Decree. The location of POD 69 is South 800 feet and East 100 feet of the NW corner of Section 23, within the NW ¼ of NW ¼ of Section 23, T40N, R8W, MDB&M.

5. The State Water Board has determined that the petition for change does not constitute the initiation of a new right nor operate to the injury of any other lawful user of water. The State Water Board has also determined that good cause for such change has been shown. Dedicating water as authorized under the 1707 petition¹ is consistent with the Decree because the project would be: (1) operated in accordance with water rights recognized in the Decree, (2) will be subject to any seasonal diversion limits established in the Decree, and; (3) does not change the priorities of rights.
6. The State Water Board finds that the change in purpose and place of use pursuant to the 1707 petition will not increase the amount of water that the Petitioner is entitled to use, and will not initiate a new right or unreasonably affect any legal user of water. The State Water Board further finds that the changes are in the public interest, will not adversely affect fish, wildlife, instream beneficial uses, or public trust resources and otherwise meets the requirements of Division 2, of the Water Code. The finding that the project will not adversely affect fish and wildlife is based on the February 2009 "Biological Justification to Support Proposed Changes to Points of Diversion and Purpose of Use of Decreed Water, East Fork Scott River, Siskiyou County" prepared by the Department of Fish and Game.
7. The baseline for this project is conditions as of March 12, 2009, the date the petition was filed with the State Water Board, Division of Water Rights. Pursuant to the California Environmental Quality Act (CEQA), the State Water Board is issuing a Notice of Exemption based on an existing facilities exemption (Cal. Code Regs., tit. 14, section 15301), and minor alterations to land exemption (Cal. Code Regs., tit. 14 section 15304).

The replacement of unlined ditch with pipeline laid in the ditch, change from flood irrigation to sprinkler irrigation, and related dedication of the conserved water savings to instream flow will not cause significant adverse impacts on any sensitive environment and will not result in significant cumulative impacts. The project will not involve removal of healthy, mature, scenic trees. The project does not involve an expansion in use beyond that which existed at the time the State Water Board began its environmental review.
8. Fish, wildlife, and plant species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act. A condition should be placed on the water right making the holder aware of possible obligations resulting from these acts.
9. A term has been added to require measurement of water diverted under the water right to comply with Water Code section 1605.

¹ The petition adds instream beneficial uses to the authorized beneficial uses, but does not remove any other authorized uses or reduce the amount of water that may be diverted for those uses. Thus, approval of the petition does not, in and of itself, operate to dedicate any water to the environment; the dedication occurs when Petitioner exercises the option, as authorized by the approved petition, of using water for instream beneficial uses instead of diverting and using that amount of water for other uses within the authorized place of use. (See condition 2 of this order.) Neither approval of the petition nor Petitioner's later dedication of water for instream flow requires the water right holder to continue to apply a specific amount of water to instream use in the future.

10. The State Water Board has delegated the authority to act on change petitions to the Deputy Director for Water Rights (Deputy Director) pursuant to Resolution No. 2007-0057. (Resolution No. 2007-0057, section 4.2.4.) Resolution No. 2007-0057 authorizes the Deputy Director to redelegate this authority to the Assistant Deputy Director for Water Rights. This authority has been so redelegated.
11. Pursuant to Resolution No. 2007-0057, the State Water Board has delegated authority to the Deputy Director to administer the duties required under CEQA. (Resolution No. 2007-0057, section 4.10.) Resolution No. 2007-0057 authorizes the Deputy Director to redelegate this authority to the Assistant Deputy Director for Water Rights. This authority has been so redelegated.
12. The instream flow dedication is subject to the terms and conditions of the Scott River Stream System Adjudication, including limits on diversion based on priority of rights.

NOW, THEREFORE, IT IS ORDERED:

1. The purposes of use are modified to include preservation and enhancement of fish and wildlife resources.
2. The place of use is modified to include the reach within Big Mill Creek and East Fork Scott River within the following boundaries: Upstream Limit – North 2,360,197 feet and East 6,352,150 feet, being within the NW ¼ of NW ¼ of Section 23, T40N, R8W, MDB&M. Downstream Limit – North 2,361,528 feet and East 6,350,418 feet, being within the SW ¼ of SE ¼ of Section 15, T40N, R8W, MDB&M. All coordinates are by California Coordinate System of 1983, Zone 1.
3. The quantity dedicated to instream flow is 1.4 cfs of the total 1.6 cfs recognized in the Decree for POD 69. Water will be dedicated during the period July 1 to October 15 of each year. Water dedicated to instream flow resources shall remain instream past diversion 82-15.
4. Petitioner shall install and maintain measuring devices, satisfactory to the State Water Board. Alternatively, petitioner may coordinate with the Watermaster appointed to enforce the terms of the Scott River Stream System Decree to install and maintain measuring devices required by this order. Approximately weekly weir measurements and calculations made and maintained by the Watermaster or Petitioner during the irrigation season shall be sufficient to fulfill this requirement if they include, at a minimum: (1) the amount of water diverted into Big Mill Creek Ditch for consumptive use and (2) the amount of water available for diversion but allowed to remain instream pursuant to the 1707 dedication for Big Mill Creek. The Petitioner and Watermaster may rely on instream flow measured continuously at the Department of Water Resources gauge upstream of the diversion, if available, or equivalent measures of instream flow satisfactory to the State Water Board. The State Water Board will carefully consider the expertise of the Watermaster in evaluating a Watermaster-approved equivalent methodology.

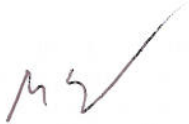
(0510900)
5. On a triennial basis, starting January 1 of the third year following issuance of this order, Petitioner shall report to the State Water Board annual diversion: (a) for consumptive purpose of use, (b) the quantity dedicated to the environment, pursuant to the 1707 petition, and (c) the total quantity diverted under the water right. No credit for instream flow dedication shall accrue for any year in which the Petitioner fails to timely document the quantity set aside for the environment.

(0510900)

6. The State Water Board may supervise diversion and use of water under this order for the protection of lawful users of water and instream beneficial uses and for compliance with the conditions. Petitioner shall allow representatives of the State Water Board and the Watermaster reasonable access to the project works to determine compliance with the terms of this order. (0000011M)

7. This order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the water right holder shall obtain authorization for an incidental take prior to construction or operation of the project. The water right holder shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this order. (0000014)

STATE WATER RESOURCES CONTROL BOARD



*Barbara Evoy, Deputy Director
Division of Water Rights*

Dated: **SEP 27 2011**