

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

DIVISION OF WATER RIGHTS

In the Matter of Water Right Application 29449

Douglas Cole, Heidi Cole, Norman Cole and Caroline Cole

ORDER CANCELING WATER RIGHT APPLICATION

SOURCE: Stanshaw Creek tributary to the Klamath River

COUNTY: Siskiyou

WHEREAS:

1. Douglas Cole, Heidi Cole, Norman Cole and Caroline Cole (Applicants) filed a water right application with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), on March 27, 1989, requesting the right to divert 2,809.8 acre-feet per year from Stanshaw Creek.
2. Application 29449 was noticed on January 28, 2000 and re-noticed on March 17, 2000. One protest was received based on potential impacts to prior rights and five protests were received based on potential impacts to fisheries resources in Stanshaw Creek, including Coho salmon (*Oncorhynchus kisutch*).
3. By letters dated March 30, 2012 and November 2, 2012, the Division requested that the Applicants submit a plan to supply information necessary to document compliance with Water Code section 1275, subdivision (b). The Division allowed 60 days and 30 days, respectively, for the Applicants to respond. The letter contained a warning that failure to submit the information requested within the time period provided could result in the cancellation of the application under Water Code section 1276. To date, the Division has not received the required information.
4. The Applicants, after due notice, have failed to submit information requested pursuant to section 1275 of the Water Code or to show good cause why additional time should be allowed. (Wat. Code, § 1276.)
5. Pursuant to Resolution No. 2012-0029, the State Water Board has delegated authority to the Deputy Director for Water Rights (Deputy Director) to cancel applications. (Resolution No. 2012-0029, section 4.5.2.) Resolution No. 2012-0029 authorizes the Deputy Director to redelegate this authority, and this authority has been so redelegated by memorandum dated July 6, 2012.

THEREFORE, IT IS ORDERED THAT APPLICATION 29449 IS HEREBY CANCELED.

It is Applicants' responsibility to remove or modify diversion works and impoundments to ensure that water subject to this cancellation is not diverted and used. Applicants are hereby put on notice that unauthorized diversion and use of water is considered a trespass and subject to enforcement action under Water Code sections 1052 and 1831. Pursuant to Water Code section 1052, any diversion of water from the point of diversion identified in this application may be subject to Administrative Civil Liability of up to \$500 per day without further notice. The State Water Board also may issue a Cease and Desist Order in response to an unauthorized diversion or threatened unauthorized diversion pursuant to Water Code section 1831.

Before initiating any work in a stream channel, Applicants should consult with the Department of Fish and Game and the Regional Water Quality Control Board to ensure that removal of project facilities does not adversely affect a fishery or result in unregulated sediment discharge to a waterway. Applicants must also consult with the Department of Water Resources, Division of Safety of Dams, if a jurisdictional size dam will be removed or breached (dam height 25 feet or more, or reservoir volume 50 acre-feet or more). These agencies may require a permit or other approval prior to any construction activity.

Applicant shall document any diversions made under claim of right independent of a permit, license, registration or certification issued by the State Water Board, such as diversions under riparian or pre-1914 rights. With limited exceptions, Water Code section 5101 requires that a Statement of Water Diversion and Use be filed for these diversions. Water Code section 5107 (c)(1) provides that the State Water Board may impose a civil liability of \$1,000, plus \$500 per day for each additional day on which the violation continues if the person fails to file a statement within 30 days after the board has called the violation to the attention of that person. These penalties are in addition to any penalties that may be imposed if the diverter does not hold a valid right or diverts in excess of what is authorized under that right.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:
JAMES W. KASSEL FOR

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: JAN 07 2013