

Farwell Jensen, Jane@Waterboards

From: Frey, George -FS <gfrey@fs.fed.us>
Sent: Wednesday, July 05, 2017 4:24 PM
To: Unit, Wr_Hearing@Waterboards
Subject: Marble Mountain Ranch-Cole Hearing
Attachments: MMR_Policy_Statement_WB hearing_7_5_2017.pdf

Dear Water Board,

Attached is a Policy Statement from the Six Rivers National Forest for the Marble Mountain Ranch-Cole Hearing.



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Received by the Hearings Unit at 4:24 p.m. on July 5, 2017

Six Rivers National Forest Policy Statement Marble Mountain Ranch – Cole Hearing

The Six Rivers National Forest adjoins the Marble Mountain Ranch (MMR) on the north, east and south sides. A portion of the MMR water system is on National Forest System lands including the diversion, the upper 2,900 feet of the 3,200 foot long ditch above the penstock and 400 feet of the outfall ditch that returns water to a tributary of Irving Creek. Also on National Forest lands is the upper part of the access road to the ditch above the penstock. The MMR penstock, power plant, 1,700 feet of the return ditch and MMR drinking water system are all on MMR lands.

MMR has no authorization from the Forest Service for the water system improvements that are on National Forest System lands as they were originally built prior to the establishment of the National Forest in this area. The Klamath Forest Reserve was established by presidential proclamation May 6, 1905. Based on advice from the Office of General Counsel, legal counsel for the Forest Service, the Forest Service cannot compel the owner of a water system constructed prior to the creation of the Forest to obtain a special use permit for improvement established prior to the creation of the Forest unless they do so voluntarily. This is compounded by the fact that MMR has a recorded pre-1914 water right.

During operations of the MMR water system there have been overflows from the ditch causing erosion of the bank and slopes below the ditch. This happens mostly in the area of the rock weir diversion but also at the outlet into Irving Creek. Forest Service personnel have reviewed damaged areas periodically and worked with Mr. Cole to identify needed improvements to better address flow intakes, strengthen the ditch structure, and reduce offsite risks to instream values and erosional impacts. We are hampered in this effort as we do not have full management control of the system because it is not under a permit or easement and predates the formation of the National Forest. Forest Service authorities that address adverse resource impacts to National Forest System lands (causing slope failures) and molesting and killing of fish (fish being diverted into the ditch) are identified in the Code of Federal Regulation. Specifically Title 36, Code of Federal Regulations (CFR), Part 261, prohibits the following: Section 8(a) "Hunting, trapping, fishing, molesting, killing or having in possession any kind of wild animal, bird, or fish, or taking the eggs of any such bird" and Section 9(a) "Damaging any natural feature or other property of the United States"). Violations of the regulations are subject to the penalty provisions in 36 CFR 261(b) "Any violation of the prohibition of this part (261) shall be punishable by a fine of not more than \$500 or imprisonment for not more than six month or both pursuant to title 16 U.S.C., section 551, unless otherwise provided."

Proposals by the State Water Resources Control Board requiring a controlled diversion structure, fish screens and lining of the ditch above the penstock are fully supported by the Forest Service. The findings and recommendation from the various investigations (as documented in the June 27, 2017 Water Board letter to Coles, Attachments A-H) are similar to an internal draft input and recommendations made by Forest Service watershed and fisheries staff.

Any proposal to return the outfall water from the power plant to a point on Stanshaw Creek above Highway 96 will require careful study as it will cross approximately ¼ mile of National Forest System land. This will be a new location not covered by MMR's water system that predates the Forest Service. The new return line will require a special use permit and appropriate environmental clearances particularly since the line would cross very steep unstable slopes above Highway 96.

The Forest Service is open to working with the State Water Resources Control Board and other regulatory agencies on an equitable solution to the many resource issues involved in this case.

Michael Green
Acting Forest Supervisor
Six Rivers National Forest
July 5, 2017