

Attachment to Notice of Exemption for Hart Ranch Shasta River Instream Flow Dedication Petitions

Background

Forrest B. Hart and Susan S. Hart, individually and as co-Trustees of The Hart Family 2003 Trust, Rabbit Hill LLC, and Soda Springs LLC (collectively, petitioner) own several adjudicated pre-1914 water rights in the Little Shasta River watershed. The petitioner has filed petitions with the State Water Resources Control Board to change the purpose of use and place of use of their adjudicated water rights in order to add the ability to reduce diversions and leave water instream to support instream beneficial uses as well as to make changes to the place of use for irrigation and stockwatering to reflect current operations.

Elevated water temperatures and low dissolved oxygen levels in the Shasta River watershed have resulted in the impairment of designated beneficial uses of water and the non-attainment of water quality objectives, primarily associated with cold water fish. This includes the migration, spawning, and early development of cold water fish such as coho salmon (*Oncorhynchus kisutch*), Chinook salmon (*O. tshawytscha*), and steelhead trout (*O. mykiss*). The coho salmon population in the Shasta River watershed is listed as threatened under the federal Endangered Species Act and the California Endangered Species Act. The petitioner's proposed changes are to facilitate a conservation strategy pursuant to a Safe Harbor Agreement (SHA) with the National Marine Fisheries Service (NMFS) (Hart Ranch SHA) and determination of consistency with the California Endangered Species Act, pursuant to Fish and Game Code section 2081, by the California Department of Fish and Wildlife (CDFW).

Water subject to the above referenced water rights is described as an important source of cold water in the region to support all life stages of the cold water fish mentioned above. Diversion of water for flood irrigation and stockwatering, which is the current practice for the above referenced water rights and is common in the region, increases water temperatures and decreases dissolved oxygen in the receiving waters. The petitioner plans to reduce diversions and dedicate water to instream beneficial uses in coordination with the Watermaster and fishery agencies based on a number of considerations, including natural flow conditions, water temperatures, and biological needs of fish and wildlife.

Exemptions

The project is exempt from the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (CEQA) under categorical exemptions for minor alterations to land and agency actions for protection of natural resources or the environment (Cal. Code Regs., tit. 14, §§ 15301, 15304, 15307, & 15308). The project meets the exemption for existing facilities (Cal. Code Regs., tit. 14, § 15301) because the change involves negligible or no expansion of use beyond what existed at the time the Division approved the change. The approved changes could all be exercised absent the approval except that the approval provides for enforcement of water remaining instream as against other diverters. Under the existing right, water need not be diverted for irrigation use and may be left instream. The approval does not expand any existing use. In addition, the project meets the exemption for minor alterations to land (Cal. Code Regs., tit. 14, § 15304), which consists of “minor public or private alterations in the condition of land, water, and/or vegetation.” (*Id.*, italics added.) While the area is not an “officially designated wildlife management area” or “fish production facility” under the example listed in subdivision (d) of the regulation, it will “result in improvement of habitat for fish and

wildlife resources or greater fish production.” (*Id.*) The list of examples demonstrates the types of projects that fit this exemption, and the project is very similar to one of the examples. The project also meets the exemptions for actions by regulatory agencies for the protection of natural resources and the environment (Cal. Code Regs., tit. 14, §§ 15307 & 15308). These exemptions apply to actions authorized under state law to assure the “maintenance, restoration, enhancement, or protection” natural resources and the environment. The very purpose of Water Code section 1707 is for “preserving or enhancing wetlands habitat, fish and wildlife resources” in the water. (Wat. Code, § 1707.) The project does not involve construction activities or relaxation of any standard allowing environmental degradation. Finally, this project is exempt from CEQA because it can be seen with certainty that there is no possibility that the project will have a significant effect on the environment. (Cal. Code Regs., tit. 14, § 15061, subd. (b)(3).)