

## ***STAFF REPORT***

**To:** Coastside County Water District Board of Directors

**From:** David Dickson, General Manager

**Agenda:** February 9, 2010

Report

Date: February 5, 2010

**Subject:** Approval of Contract with Jim Steele for Denniston Biological Study

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### **Recommendation:**

Authorize staff to contract with Jim Steele for a Denniston Creek biological study at an estimated cost of \$26,850.

### **Background:**

In November 2009, the State Water Resources Board issued a notice of the District's petition for extension of time on our Denniston/San Vicente water rights permit. The District submitted the petition in 2003, requesting that the time allowed for completion of infrastructure improvements and perfection of our water rights be extended to 2016. The notice opened a period for submission of protests to the petition.

In response to the State Board's notice, the California Department of Fish and Game (DFG) wrote a letter dated January 14, 2010 expressing a number of concerns related to Denniston and San Vicente Creeks (see Attachment A). While the letter was not a timely protest to our petition for extension of time, the District will need to address the concerns DFG raises.

Staff met with consultant Jim Steele, a former DFG department manager who has worked extensively with us on DFG issues, to discuss the letter. Mr. Steele recommended that we initiate our own study of biological resources in Denniston Creek in order to evaluate and respond to DFG concerns. His proposal to perform the study and provide related advice and assistance at an estimated cost of \$26,850 is included as Attachment B.

### **Fiscal Impact:**

Cost of \$26,850.



State of California  
Department of Fish and Game

## Memorandum

Date: January 14, 2010

RECEIVED

To: Ms. Victoria Whitney  
State Water Resources Control Board (SWRCB)  
Division of Water Rights  
Post Office Box 2000  
Sacramento, CA 95812

JAN 15 2010

COASTSIDE COUNTY  
WATER DISTRICT

Attention: Ms. Kathleen Groody

From: Charles Armor, Regional Manager  
Department of Fish and Game – Bay Delta Region, Post Office Box 47, Yountville, California 94599

Subject: Petitions for Extension of Time for Water Application (WA) 22680 Filed by Coastsides County Water District to Divert Water from San Vicente Creek, Tributary to the Pacific Ocean and Denniston Creek, Tributary to the Pacific Ocean in San Mateo County

The Department of Fish and Game's (DFG) interest in this Petition is based on its status as trustee agency for California's fish and wildlife resources and as a responsible agency under Fish and Game Code Section 1600 et. seq. and the California Endangered Species Act (CESA).

DFG is concerned that the project is having direct and cumulative adverse impacts on Public Trust resources of Denniston and San Vicente creeks in San Mateo County. The project currently does not bypass sufficient flow and operations described in the Petition are occurring without appropriate authorization from DFG. The current project is impacting Public Trust resources by continuing to prevent passage and reducing instream flow necessary to maintain riparian and fish<sup>1</sup> habitat in good condition. In particular, impacts to steelhead (*Oncorhynchus mykiss*), California red-legged frog (*Rana aurora draytonii*), foothill yellow-legged frog (*Rana boylei*), San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), and other aquatic and terrestrial species may continue to occur. Direct and cumulative impacts on resources from construction of the facilities and the diversion of water under WA 22680 must be assessed and mitigated through appropriate site-specific measures during environmental review.

### Project Description

Under WA 22680, the applicant seeks to expand the existing project facilities to include a new diversion on San Vicente Creek and continued diversion at Denniston Reservoir for municipal use. The applicant requests a season of diversion from January 1 to December 31 of each year.

<sup>1</sup> "Fish" means wild fish, mollusks, crustaceans, invertebrates, or amphibians, including any part, spawn, or ova thereof.

### Statement of Facts

- Fish and Game Code Section 5937 requires that sufficient water be passed over, around, or through a dam to maintain fish in good condition. CCR Title 23 Section 782 emphasizes the requirement for the SWRCB to comply with this Section. The Petition does not include any protective bypass flows below Denniston Reservoir, which is also a known fish barrier. Further, the proposed diversion on San Vicente Creek does not include any bypass flows beyond the proposed Point of Diversion (POD). Diversion of water at these locations could dewater downstream reaches during times that sensitive species would normally be present. Without implementation of any bypass flows, DFG cannot conclude that the project as proposed would maintain resources in good condition.
- Effects to sensitive resources including State and federally listed species have not been sufficiently analyzed or disclosed. A site-specific analysis of Denniston Reservoir and San Vicente Creek and its resources should be conducted to determine the flows necessary to keep sensitive resources in good condition. The survey should focus on State and federally listed species as well as any Species of Special Concern.
- The Application has failed to accurately disclose current operations and identify whether sufficient water exists for use without unreasonably affecting other water users or adversely affecting sensitive resources in downstream reaches. A Water Availability Analysis (WAA) has not been included in the Application, making it impossible to determine the amount of water available for diversion. Though the Applicant has been diverting water at Denniston Reservoir, it should not preclude SWRCB from thoroughly assessing the effects of the new diversion at San Vicente Creek. The WAA should take into consideration the needs of instream resources and, depending on the results of the WAA, DFG may recommend that a site-specific study be conducted to determine the amount of water necessary to keep sensitive resources in good condition.

### Lake and Streambed Alteration Agreement

The applicant should also be advised that a Lake and Streambed Alteration Agreement (LSAA) pursuant to Fish and Game Code Section 1602 shall be required for the construction of the new diversion work and any diversion of water within each stream. This agreement process will be administered through the Bay Delta Regional Office in Yountville and can be initiated by contacting the Lake and Streambed Alteration Program at (707) 944-5520. Water cannot continue to be diverted until an LSAA is executed by the applicant and DFG. DFG would also require the same site-specific information described below potentially including an instream flow study to determine appropriate minimum bypass flows for maintenance of aquatic habitat, fish and wildlife, bypass flows needed to maintain all life history stages of these species, and the impacts of the existing on-stream reservoir on passage.

The conditions DFG may require to keep fish in good condition and to avoid and minimize impacts to resources are as follows:

1. The season of diversion shall be limited to December 15 to March 31 of each year.

2. From April 1 to December 14 of each year, all natural flow shall be bypassed.
3. No water shall be diverted even within the allowable diversion season, until the measure of flow being passed around the POD is sufficient to keep aquatic resources in good condition including sufficient water to allow for passage beyond Denniston Reservoir. Determination of what minimum flows are necessary shall be done in consultation with DFG staff and will most likely require a site-specific instream flow study.

#### Site-Specific Instream Flow Survey

In this case, the only acceptable method to determine what flows are necessary to keep fish in good condition and subsequently what amount of water is available for appropriation, is a site-specific study. In order to address Public Trust resource requirements, the Applicant should at a minimum be required to hire a qualified fisheries biologist to prepare and conduct a site-specific instream flow study. DFG recommends that the Applicant contact DFG within 90 days to provide a study plan for implementation. If the Applicant pursues implementation of the study in a timely manner, DFG expects that a completed study could be submitted within 18 months of the study plan approval. In the interim, DFG expects that the Applicant maintain minimum flows to keep fish in good condition. The current unauthorized operations are dewatering downstream reaches, preventing passage and adversely affecting resources that would otherwise be detected in surveys. In order to accurately reflect stream resources present in the system, the Applicant must release water during the study period. DFG is recommending the Applicant pursue implementation of the study with due diligence. Alternatively, the applicant should be required to cease all diversions until a site-specific study can be implemented and long-term instream flow recommendations can be developed.

The study plan to be provided to DFG and National Marine Fisheries Service (NMFS) for review, and approval should include, at a minimum, the following:

1. A habitat-based stream assessment done at a seasonally appropriate time period that incorporates habitat, species, and life history criteria which may be impacted by:  
1) The new POD requested in this project; and 2) any increase in diversion at any established POD that may result from the redistribution of water from San Vicente Creek.
2. A site-specific instream flow study to determine appropriate minimum bypass flows for maintenance of aquatic habitat, fish and wildlife. The study should specifically address bypass flows needed to maintain all life history stages of the species described in condition 1 in all tributaries impacted by the proposed project. The study should also consider the impacts of the existing on-stream reservoir on fish passage with a specific proposal to provide passage during sensitive time periods.
3. A hydrologic study to determine if the production of each watershed at the POD is sufficient to provide the water requested when in compliance with proposed minimum bypass flows and season of diversion. The study should identify all other basis of water rights in watersheds potentially affected by the proposed diversions.

4. A plan to monitor compliance, the effectiveness of the stipulated flows, and procedures for making subsequent modifications, if necessary.

In order to address the project's impacts on Public Trust resources, any extension of the WA should be conditioned to avoid or minimize impacts to sensitive species. Further, by this memorandum, DFG is notifying the Applicant and SWRCB that the project will require authorization from DFG. Consultations and subsequent LSAA terms may require modification to the project, and it is recommended that SWRCB delay action on this Petition until after DFG issues its authorizations. Recommended terms may include but are not limited to:

1. Under the exercise of all bases of rights, the season of diversion shall be limited to December 15 to March 31 of each year.
2. Under the exercise of all bases of rights, from April 1 to December 14 of each year, all natural flow shall be bypassed.
3. No work shall commence and no water shall be diverted, stored, or used under this permit until a signed copy of an LSAA between DFG and the Permittee is filed with the SWRCB Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the Permittee. If an LSAA is not necessary for this permitted project, the Permittee shall provide the Division of Water Rights a copy of a waiver signed by DFG.
4. No water shall be diverted, even within the allowable diversion season, until the measure of flow being bypassed around the existing POD is of sufficient quantity and quality to allow upstream and downstream fish passage, and maintain in good condition any aquatic resources that would exist in downstream reaches under unimpaired flows. Determination of the bypass flow shall be based on site-specific biological investigations approved by DFG and NMFS personnel.
5. The bypass shall be a passive or automated system that is designed to only divert flow when the terms of the SWRCB permit will be met. Outside the diversion season and at low flows, water will automatically bypass the POD.
6. To reduce impacts due to abrupt changes in released or diverted flows to downstream fish resources, bypass flows shall be modified incrementally to avoid sudden changes in flow which may cause stranding downstream of PODs. An Operations Plan including a ramping plan shall be provided to DFG for review and concurrence prior to construction. By July 1 of each year, a summary monitoring report conducted over the previous season shall be provided to DFG. The report shall provide a summary of the flow data collected in a manner that clearly demonstrates whether or not the flow and diversion rate conditions of the Agreement were met.
7. To protect in-stream resources from cumulative impacts of instantaneous diversion, there shall be no direct diversion for irrigation or for frost or heat control under the exercise of any basis of right.

Ms. Victoria Whitney

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January 14, 2010

8. If unforeseen problems arise which are causing significant adverse impacts to fish and/or wildlife resources or as further data is accumulated for analysis, the Applicant may be required to implement additional measures to reduce those impacts.
9. Permittee must agree to allow access for DFG personnel to monitor compliance.

If you have questions regarding this protest, please contact Ms. Corinne Gray, Staff Environmental Scientist, at (707) 944-5526; or Mr. Greg Martinelli, Water Conservation Supervisor, at (707) 944-5570; or by writing to DFG at the memorandum address listed above.

cc: ✓ Coastside County Water District  
766 Main Street  
Half Moon Bay, CA 94019

Mr. David Hines  
National Marine Fisheries Service  
777 Sonoma Avenue, Room 325  
Santa Rosa, CA 95404

**Bid for developing the  
COASTSIDE COUNTY WATER DISTRICT  
RESPONSE TO DEPARTMENT OF FISH AND GAME ISSUES  
REGARDING  
PETITION TO SWRCB FOR WA EXTENSION OF TIME  
FOR DENNISTON CREEK AND SAN VECENTE CREEK**

**BACKGROUND**

CCWD has petitioned for an extension of time for Water Application (WA) 22680 that allows a withdrawal of 2 CFS each from Denniston Creek and San Vicente Creek in San Mateo County. DFG (Department of Fish and Game) has filed a letter of concern with the SWRCB alleging several potential direct and cumulative adverse affects will arise from the diversion of this water. DFG has also determined that CCWD is required to file for a permit to divert water under the Fish and Game Code. DFG states that the season of diversion must be reduced and even at that, no diversion shall continue until bypass flows are confirmed with an instream flow study.

The CCWD has asked for a bid to review the DFG letter and conduct both field and record review of the stated concerns, determine the validity of the DFG concerns, develop recommendations for a strategy that responds to legitimate concerns and suggest potential choices for strategy outcomes. Secondly, develop a response letter of record to the SWRCB regarding the DFG issues that will establish the CCWD position and appropriate choice of actions. Many of the DFG issues are without reference to established data. Therefore, information gathered by this approach will potentially reduce the scope of the stated DFG requirements and be incorporated in any permit or additional studies required by DFG.

**SCOPE OF WORK**

1. **Review the assertion that bypass flows in each creek are insufficient to maintain downstream resources.** Obtain and review the available historical hydrologic records to determine the current flows and dependent stream resources. Describe these resources in context with the human use and natural history aspects of each watershed.
2. **Determine authorization required from DFG.** Analyze components of this authorization such as protections for fish passage, downstream resources and listed species. Assess various mitigation measures as may be necessary to offset any valid potential impacts.
3. **Conduct a records and field assessment** of the habitats at risk in each watershed to determine the need for mitigation measures or future studies that may form the basis for such authorization.
4. **Develop draft letters of record to the SWRCB** that demonstrate the CCWD position and method for protecting natural stream resources.
5. **Contact DFG and confer on components** of an appropriate study that will establish the additional data needed to determine protective actions in each watershed.
6. **Develop the elements for a draft permit application** as needed for DFG authorization to conduct CCWD operations.

**ESTIMATES OF TIME**

1. Develop a letter to the RWQCB that indicates that CCWD is reviewing the DFG concerns= **2hrs.**
2. Conduct a field survey of each watershed and assess the location, quality and quantity of habitats extant relevant to the District POD. This includes reviewing file data, walking and measuring field attributes and documenting natural resources. San Vincente Creek= **24 hrs.** Denniston Creek= **24hrs.**
2. Review historical flow data as available and assess the potential impacts to instream resources based on a review of stream habitats and the watershed survey. Determine the validity for reducing the season of diversion to avoid impacts. SVC= **15hrs.** DC= **15hrs.**
3. Review the historical placement of the Denniston dam and any structures on San Vincente and analyze the present culpability of the structures to produce impacts as described by DFG. SVC=**10hrs.** DC=**10hrs.**
4. Develop a draft letter of record to the SWRCB responding to allegations by DFG and assessing the appropriateness of DFG requirements. SVC= **8hrs.** DC=**8hrs.**
5. Contact and meet with DFG representatives as needed and determine their requirements for additional study= **8 hrs.**
6. Draft a report to CCWD with findings and recommendations that will respond to appropriate concerns of DFG=**20hrs.**
7. Develop a draft application for DFG permits as required to comply with applicable laws=**10hrs.**
8. Develop a draft study for each watershed that will support both the diversion and mitigations as proposed in the DFG Application=**15hrs.**

**COMPENSATION and DELIVERY**

The above times include costs and travel and assistants as needed. There is no standby time as in monitoring studies and the active investigation rate is \$150/hour. The cost of this investigation is 179X150=\$26,850. The project can begin ASAP for the first letter, historical and file data, and the field investigation can take place as weather permits in Feb/March. The final products will be available before the end of April. Potential advantages of this study are a reduced and focused DFG involvement in CCWD operations.

Jim Steele, Professional Biological Consultant  
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