

MEMO

FROM: Allen Merritt

DATE: August 22, 2012

TO: T67067 and Applications 72-7577, 72-7578, 72-7579 and 72-7580

SUBJECT: Review

All applications were initially filed by Epicenter but have been recently assigned to Lois Von Morganroth pursuant to agreement settling a lawsuit between the parties. The transfer and 72-7577 and 72-7578 were advertised in 1999. All three were protested by Morganroth. Hearings were held and decisions written but no final order was ever issued. 72-7579 and 72-7580 were not initially processed because of the Wild and Scenic Rivers Moratorium. The moratorium has since been removed and these two application processed in 2012. Now that Lois Von Morganroth has control of the applications she wishes to proceed with the applications.

I contacted Al Morganroth, manager of the ranch and son of Lois, for an explanation of the applications and capacity of diversion works. He indicated that the springs which form the creek currently are flowing around 12 – 13 cfs. He indicated that is the amount of water to be utilized in the fish facility and the amounts should not be additive to the hydro plant and other irrigation decrees. He indicated that the water is just being used for fish and then passed on down for use at the hydro plant (72-7375) and then used for irrigation under his decrees. I discussed with him the comment of F&G in their 9/1/2006 letter requesting a bypass flow of 1.5 cfs down the creek below the settling pond. He indicated that was not acceptable. He indicated that the creek flow in that area is mostly leakage from the canal and the fish facility when operating. He indicated that currently only around 0.5 cfs is flowing there and to require more would injure his prior rights since essentially these rights allow drying up of the creek. He indicated that there may remain some water in this area but to set a fixed amount is unacceptable. He indicated that with his discussion with F&G he has been told that they encourage all use of the warm water to avoid potential injury to Salmon. He indicated there is no trout in the creek in the area of the fish hatchery.

Based on this assessment I have created the attached spreadsheet with draft combined limits. It is reasonable to limit the waters at the facility to 13.1 cfs, consistent with what the applicant expects and to what is actually flowing. Regarding the F&G comments, it appears all impact is on the applicant's property and the rational for the 1.5 cfs is vague. In light of the ability of the right holder to dewater the creek with existing rights it appears the 1.5 cfs bypass may injure existing rights and in this situation is unwarranted and should not be a condition of approval.

I have discussed the draft conditions with Shelley Keen and Pam Skaggs at the state office and they concur with the assessment.

