

DOUGLAS AND HEIDI COLE AND
MARBLE MOUNTAIN RANCH – WASTE
AND UNREASONABLE USE HEARING

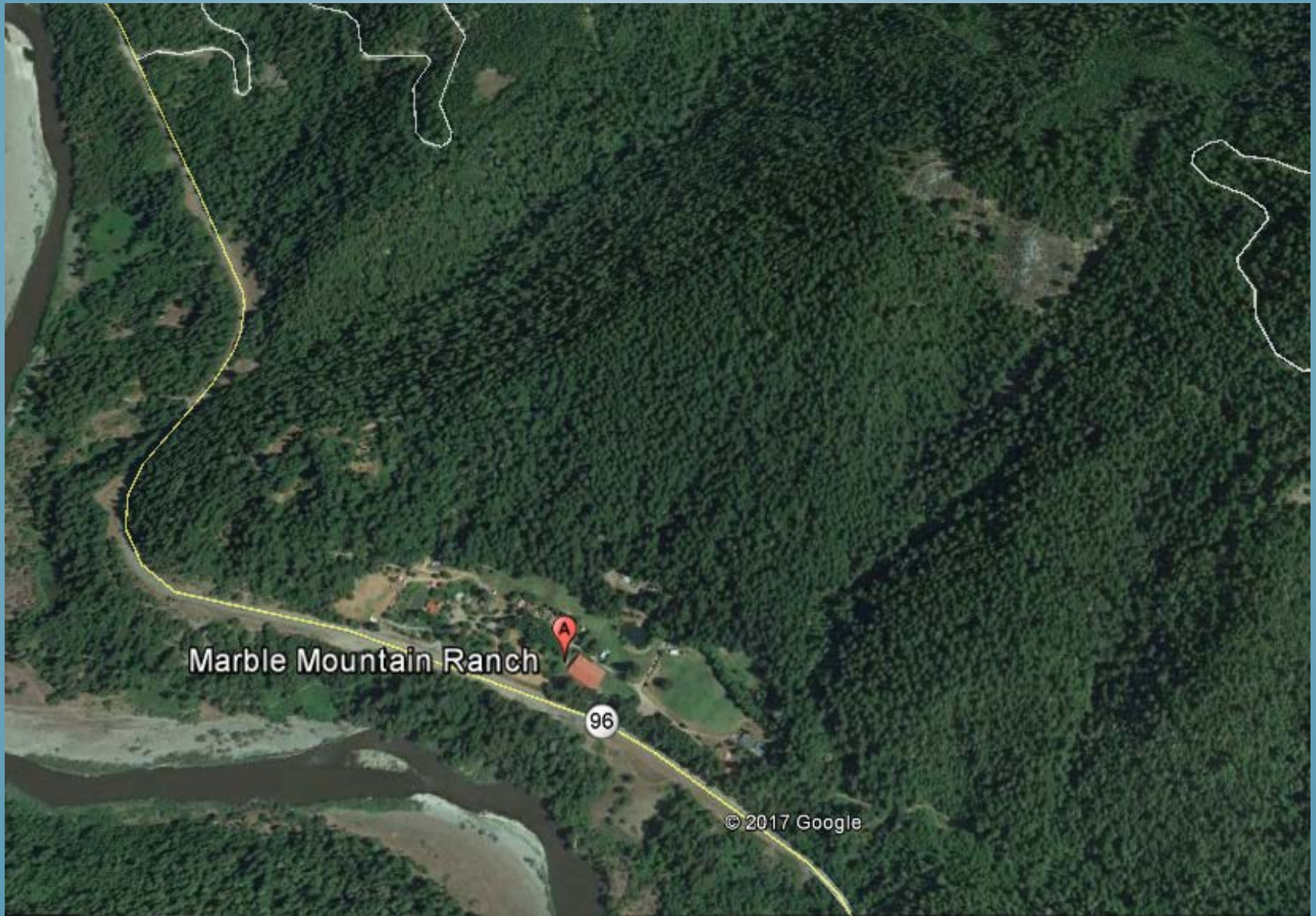
NOVEMBER 13, 2017

Taro Murano

Division of Water Rights

State Water Resources Control Board

MARBLE MOUNTAIN RANCH



MARBLE MOUNTAIN RANCH



MARBLE MOUNTAIN RANCH



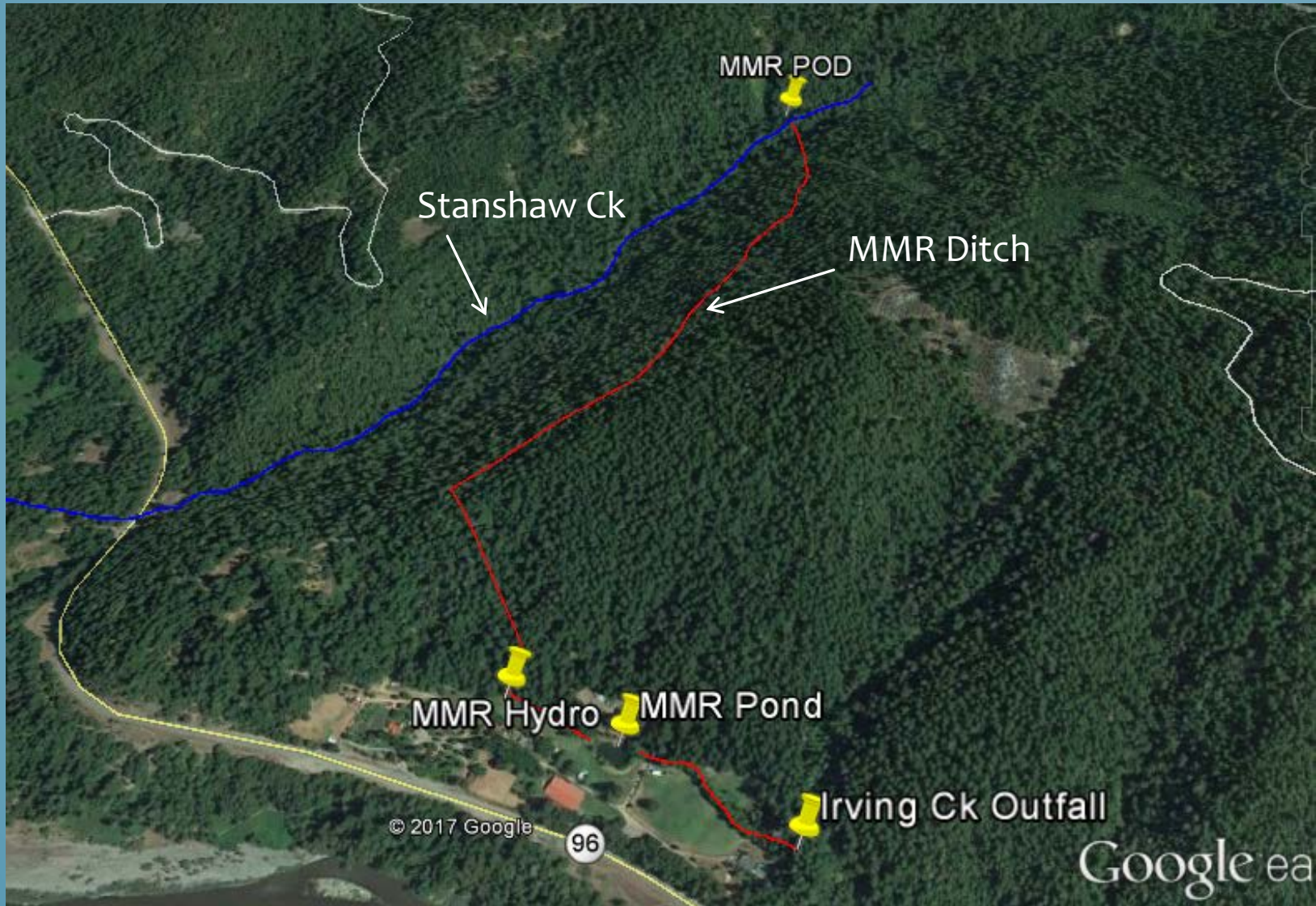
MARBLE MOUNTAIN RANCH



CLAIMED WATER RIGHTS

- Statement of Water Diversion and Use
S015022
- Statement of Water Diversion and Use
S016375
- Small Domestic Use Registration, D030945R

POINT OF DIVERSION



POINT OF DIVERSION



POD showing
hand stacked
rocks

MMR's
ditch

Stanshaw
Creek

02/12/2015 14:18

IRVING CREEK OUTFALL



STANSHAW CREEK



STANSHAW CREEK POOL



PRE-1914 CLAIM

- 1867 claim by E. Stanshaw
- 600 miner's inches – about 15 cfs
- Patent date for original parcel March 27, 1911
- Since 1800's, mining has ended, the property has been subdivided, and beneficial uses have changed.
- Current use is primarily hydropower, but also domestic use and irrigation.
- Current use limited by the capacity of the diversion ditch to about 3 cfs

STATEMENT S015022

- Filed December 1, 1998
- Beneficial uses – domestic, irrigation, fish and wildlife protection and/or enhancement, fire protection, stock watering
- Claims use before 1914
- Claims right to divert up to 0.49 cfs year-round
- 2.5 cfs diversion work capacity
- No supplemental statements filed in 2013 or 2016

STATEMENT S016375

- Filed May 28, 2010
- Beneficial uses – domestic, irrigation, power
- Claims use before 1914
- Claims right to divert up to 3.0 cfs year-round
- No supplemental statements filed in 2013 or 2016

SMALL DOMESTIC REGISTRATION D030945R

- Received September 9, 1999
- For collection to storage of up to 10 acre-foot
- Annual water use reporting and renewal every 5-years
- Key terms require –
 - Term 17 - Compliance with Fish & Game Code section 5937
 - Term 18 - Diversion facility with a satisfactory method of measuring and bypassing sufficient water to satisfy downstream prior rights and any DFW requirements
 - Term 19 - No construction or diversion of water until all necessary federal, state, and local approvals obtained

APPLICATION 29449 - FILING

- Filed by predecessors March 17, 1989
- Sought to appropriate 2,168 acre-feet per year at up to 3 cfs from Stanshaw Creek
- Beneficial uses – hydropower, fish and wildlife protection/enhancement (eventually eliminated)
- Diverters took ownership in 1994.

APPLICATION 29449 - CLAIMS

- Claimed pre-1914 right, but only evidence 1867 Stanshaw claim
- Prevailing view was that most of original right lost to forfeiture and only rights for irrigation and domestic use remained
- Division staff recommended 0.02 cfs for domestic use and 0.09 cfs for irrigation
- Prior owner indicated hydropower turbine installed 1940-1942

APPLICATION 29449 - PROTESTS

- Protests filed by NMFS, USFS, DFW, CSPA alleging diversion and use would adversely affect resident fish
- Protest by downstream property owners alleging diversion would drastically reduce available flows
- NMFS and DFG offered to dismiss if Diverters would bypass a minimum flow and return hydropower tailwater to Stanshaw Creek
- NMFS and DFG asserted minimum flows important for maintaining thermal refuge
- Diverters agreed to alter system to return flow if they could get grant funding to cover costs

PRIOR ENFORCEMENT ACTION

- 2001 Klamath Forest Alliance filed complaint alleging Diverters adversely impacted public trust resources.
- Investigation completed 2002.
- Investigation recommended Diverters cease all diversion of water under all rights unless they bypassed sufficient flow below the POD to maintain adequate flow in lower Stanshaw Creek

APPLICATION 29449 - CANCELLATION

- Diverters did not secure grant funding and would not otherwise fund measures necessary to resolve the DFG and NMFS protests
- Division lacked information necessary to find that application met the requirements of Water Code section 1275(b)
- Diverters stated they would instead rely on their pre-1914 claim
- Division cancelled application January 7, 2013

LENNIHAN REPORT

- Prepared through National Fish and Wildlife Foundation grant to Mid Klamath Watershed Council
- Neutral evaluation of MMR water rights to inform stakeholder process
- Reviewed chain of title, historical water use, and other information
- Summarized past and present water use of Diverters and their predecessors in interest
- Completed before *Millview County Water District v. State Water Resources Control Board*

WATER USE TECHNICAL MEMORANDUM

- Drafted by Joey Howard, Cascade Stream Solutions
- Technical report accompanying Lennihan Report
- Quantified current and historical water use
- Hydropower did not exceed 0.36 cfs until after 1965 and did not exceed 0.66 cfs until about 1994
- Diversion varied with available stream flow independent of demand
- Water demand greatest in summer to support hydropower
- Power and water needs met at about 3 cfs