



California Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Region 1 – Northern
601 Locust Street
Redding, CA 96001
(530) 225-2300
www.wildlife.ca.gov

EDMUND G. BROWN, Jr., Governor
CHARLTON H. BONHAM, Director



June 9, 2017

Mr. Doug Cole
Marble Mountain Ranch
92520 CA-96
Somes, Bar, CA 95568

Dear Mr. Cole:

Draft Lake or Streambed Alteration Agreement, Notification No. 1600-2017-0135-R1, Marble Mountain Ranch Diversion, Stanshaw Creek

The California Department of Fish and Wildlife (CDFW) has determined that your project requires a Lake or Streambed Alteration Agreement (Agreement) because it could substantially adversely affect an existing fish or wildlife resource. Enclosed is a draft Agreement that includes measures CDFW has determined are necessary to protect existing fish and wildlife resources.

Within 30 days of receipt of this draft Agreement, you must notify CDFW in writing whether the measures to protect fish and wildlife resources are acceptable (Fish and Game Code, § 1603). If you agree with the measures set forth in the draft Agreement, you or your authorized representative must return two copies of the draft Agreement with original signatures to the above address.

If you disagree with any measures in the draft Agreement, please contact the CDFW staff identified below. In the event that mutual agreement is not reached, you may follow the dispute resolution process described in Fish and Game Code section 1603, subdivision (a). If you fail to respond in writing within 90 days of receiving the draft Agreement, CDFW may withdraw the draft Agreement.

Please be advised CDFW may not execute the Agreement until it has complied with the California Environmental Quality Act (CEQA) (Public Res. Code, § 21000 et seq.) as the lead or a responsible agency. Please note that the draft Agreement may be subject to change upon receipt and review of the environmental document for the project.

After you receive a final Agreement executed by CDFW, you may begin the project the Agreement authorizes provided you have obtained all other necessary local, state, and federal permits or other authorizations.

For more information on the process described above, please refer to Part IV in the "Notification Instructions and Process" included with your notification materials, which is also available at <https://www.wildlife.ca.gov/Conservation/LSA/Forms>.

Conserving California's Wildlife Since 1870

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Marble Mountain Ranch
June 9, 2017
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If you have questions regarding this letter, please contact Mike Harris, Senior Environmental Scientist (Supervisor) at (530) 225-2306 or by email at Michael.R.Harris@wildlife.ca.gov.

Sincerely,



Michael R. Harris
Senior Environmental Scientist (Supervisor)

cc: California Department of Fish and Wildlife
Michael R. Harris
Michael.R.Harris@wildlife.ca.gov

Barbara A. Brenner
barbara@churchwellwhite.com

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
REGION 1 - NORTHERN
601 LOCUST STREET
REDDING, CA 96001



STREAMBED ALTERATION AGREEMENT
NOTIFICATION NO. 1600-2017-0135-R1
STANSHAW CREEK

MR. DOUG COLE
MARBLE MOUNTAIN RANCH DIVERSION

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and Doug Cole (Permittee).

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on May 2, 2016 that Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, CDFW has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

PROJECT LOCATION

The project is located at Stanshaw Creek, tributary to the Klamath River in the County of Siskiyou, State of California; Section 33, Township 13N, Range 6E; U.S. Geological Survey (USGS) 7.5 Minute Quadrangle map Somes Bar, Humboldt Base and Meridian; Latitude 41° 28' 55"N, Longitude 123° 29' 246"W Degrees Minutes Seconds.

PROJECT DESCRIPTION

The project is limited to activities associated with the diversion of water from Stanshaw Creek, construction and maintenance of a small rock wing dam to divert flows into the diversion conduit and maintenance of an existing culvert/flume crossing and unnamed ephemeral stream that is a tributary to Stanshaw Creek. The State Water Resources Control Division of Water Rights has determined that the Permittee has a water right for up to 3 cubic feet of water (cfs) for consumptive and non-consumptive use. Construction and maintenance of the diversion wing dam involves hand stacking of

stream material within the channel of Stanshaw Creek and adjustments to the dam during the period of diversion.

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect within and downstream of the project area without implementation of the conditions contained within this Agreement include: Chinook salmon (*Oncorhynchus tshawytscha*), coho salmon (*O. kisutch*), steelhead trout (*O. mykiss*), Southern Torrent Salamander (*Rhyacotriton variegatus*), other game and non-game fishes, other amphibians and reptiles, aquatic invertebrates, mammals, birds, and other aquatic and riparian species.

The adverse effects the project could have on the fish or wildlife resources identified above include:

Impacts to water quality:

- increased water temperature due to lower flows instream;
- change in dissolved oxygen; and
- water quality degradation.

Impacts to bed, channel, or bank and natural flow; direct effects on fish, wildlife, and their habitat:

- stranding of fish or hindering fish passage;
- entrapment in isolated pools due to loss of water surface elevation downstream;
- direct impacts on benthic organisms;
- change in flow depth, width or velocity;
- habitat fragmentation below diversion;
- impediment of up- or down-stream migration;
- damage to aquatic habitat and function;
- direct and/or incidental take;
- indirect impacts including potential impacts to downstream coho salmon summer rearing habitat
- increased turbidity during sediment removal and/or instream activities; and
- relocation of stream channel or change in channel form.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily

available at the project site at all times and shall present them to CDFW personnel, or personnel from another state, federal, or local agency upon request.

- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, CDFW shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that CDFW personnel may enter the project site to verify compliance with the Agreement, provided CDFW: a) provides 24 hours advance notice; and b) allows the Permittee or representatives to participate in the inspection and/or monitoring. This condition does not apply to CDFW law enforcement personnel.
- 1.5 Permittee's Notification. Notification of Lake or Streambed Alteration, together with all maps, plans, photographs, drawings, and all other supporting documents submitted with the notification to describe the activity is hereby incorporated by reference into this Agreement.
- 1.6 Other Agency Permitting Requirements. The U.S. Army Corps of Engineers (Corps) has permitting requirements for certain instream projects under Section 404 of the Federal Clean Water Act. If this project features the placement of dredged or fill materials into the channels of streams (below the ordinary high water mark) that are waters of the United States, a permit may be required by the Corps. If your project needs a permit from the Corps, you will also need to obtain a Water Quality Certification pursuant to Section 401 of the Federal Clean Water Act from the Regional Water Quality Control Board (Regional Water Board). If your project will involve disturbance within or discharges of pollutants to waters of the State of California, the Regional Water Boards may require a permit, whether or not the Corps requires a permit. In addition, your project may possibly need authorization from the National Marine Fisheries Service (NMFS) or the U.S. Fish and Wildlife Service for the incidental take of a species listed as endangered or threatened under the Endangered Species Act. If there is any question regarding the possibility of the project meeting the above limitations, the Permittee should contact the Corps and the Regional Water Board prior to beginning work. This Agreement in no way represents permitting requirements by the Corps, Regional Water Board, NMFS or the U.S. Fish and Wildlife Service. It is the responsibility of the Permittee to contact the Corps, and to comply with the provisions of any Section 404 permit issued, if required by the Corps. Similarly, it is the

responsibility of the Permittee to contact the Regional Water Board and to comply with the provisions of any Section 401 Certification, Regional Water Board Waste Discharge Requirements or waiver of Waste Discharge Requirements issued by the Regional Water Board.

2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

WATER DIVERSION

- 2.1 Permitted Project Activities. The activities authorized pursuant to this Agreement are limited to the following: 1) diversion of water pursuant to a legal water right; 2) construction and maintenance of a wing dam at the point of diversion to entrain flows and 3) the maintenance of an existing culvert/flume on an unnamed ephemeral tributary to Stanshaw Creek.
- 2.2 Limitations of Authorization for Water Use. This Agreement does not authorize any diversion, use, or storage of water unless already permitted by law.
- 2.3 Water Right Compliance. Permittee shall divert and use water in accordance with a valid water right, including any limitations on when water may be diverted and used, the purpose for which it may be diverted and used, and the location(s) where water may be diverted and used.
- 2.4 Prevention of Fish Entrainment in Diversion Conduit. Within one year of the effective date of this Agreement the Permittee shall prevent the entrainment of fish in the diversion conduit. Any modifications to the project necessary to prevent entrainment of fish shall be reviewed and approved by the Department prior to construction. If additional conditions are needed for the protection of fish and wildlife resources based on proposed modifications to the project, this Agreement shall be amended to include such measures if required.
- 2.5 Fish Passage. The water diversion facility shall be designed, constructed, and maintained so it does not prevent, impede, or tend to prevent or impede the passing of fish upstream or downstream, as required by California Fish and Game Code section 5901.
- 2.6 Wing Dam Construction and Maintenance: Construction of the wing dam shall be completed using hand tools and local stream materials. The length of the wing dam will not span more than 25% of the active channel. No digging or excavation of the channel shall occur during construction or maintenance.
- 2.7 Instream Bypass Flow/Critical Riffle Criteria. Except as authorized in this section, Permittee shall not interfere with instream flows, pool depths or instream water

temperatures past the point of diversion located on Stanshaw Creek. The following instream flows shall be maintained to meet instream flow requirement depths identified in National Marine Fisheries Flow Recommendation (Flow Recommendation) for Stanshaw Creek dated August 3, 2016 and included with this Agreement as Attachment 1.

- a. At all times, the Permittee must not divert water in a way that would result in less than 2 cfs past the point of diversion.
- b. No more than 10 percent of the flow above the 2 cfs minimum instream flow requirement may be diverted for consumptive use by the Permittee.
- c. The Permittee may divert water for non-consumptive use such that the combination of consumptive and non-consumptive water equals no more than 3 cfs and provided that Permittee meets Conditions 2.7(a) and (d).
- d. The Permittee has informed the Department that juvenile salmonids have been found at the point of diversion and within the diversion conduit. Because the diversion channel is an anadromous reach, the Permittee must return all non-consumptive water and any consumptive water not consumed to Stanshaw Creek. The Department and Permittee agree to determine an appropriate location for return of water to Stanshaw Creek that allows for non-consumptive use and protection of fish and wildlife resources.
- e. Permittee shall ensure that water returned to Stanshaw Creek maintains suitable water quality and temperatures that will not impair existing instream flows.
- f. The Permittee shall install a locking headgate, valve or other device sized appropriately for the authorized diversion, that can regulate flow, and a functional measuring device or flow meter per Senate Bill 88 (SB 88) signed by Governor Edmund G. Brown Jr. on June 24, 2015, on the diversion that is Department-approved to facilitate better control and management of water delivery within 6 months of the effective date of the Agreement. Depending on the design and location of the locking headgate or device, this Agreement may need to be amended to add construction specific conditions to protect fish and wildlife resources.

2.8 The Permittee shall at a minimum take weekly flow measurement to determine instream flow above the point of diversion to determine water availability for diversion. A log shall be kept onsite that includes date, time, method, and amount of water instream above the point of diversion. Permittee agrees to allow inspection of that log at reasonable times by CDFW and to provide a copy of the log to CDFW by December 31 of each year this Agreement is in effect.

- 2.9 Water Conservation. The Permittee shall make best efforts to minimize water use and to follow best practices for water conservation and management.
- 2.10 Incidental Take. This Agreement does not allow for the take, or incidental take of any state or federal listed threatened or endangered listed species.

Wing Dam and Flume Culvert Construction and Maintenance

- 2.11 Work Period. Instream work shall occur only when salmonids are least likely to be present or affected by the activities, July 1 through October 15.
- 2.12 Water Contamination. No equipment or machinery shall be operated within any flowing stream, or where wetland vegetation, riparian vegetation, or where aquatic organisms may be destroyed.
- 2.13 Vegetation Removal. Disturbance or removal of vegetation shall be kept to the minimum necessary to complete project related activities.
- 2.14 Remove Cleared Material from Stream. All trimmed or cleared material/vegetation shall be removed from the area and deposited where it cannot re-enter the stream.
- 2.15 Turbidity and Regional Water Board Basin Plan. Subject to approval of the Regional Water Board, all instream activities and any discharges due to project activities shall at all times attain the turbidity requirements listed in Basin Plan for the project area.
- 2.16 Turbidity and Regional Water Board Waste Discharge Requirements. The Permittee or Designated Representative shall monitor instream turbidity levels during project activities and shall adhere to those specifications for turbidity set forth by the Regional Water Board's Conditional Waiver of Waste Discharge Requirements issued for this project.
- 2.17 Removal of Debris, Materials and Rubbish. Permittee shall remove all project generated debris, building materials and rubbish from the stream and from areas within one hundred and fifty (150) feet of the high water mark where such materials could be washed into the stream following completion of project activities.

3. Reporting Measures

- 3.1 Permittee shall meet the reporting requirement described below.

Water Use Reporting. SB 88 was signed by Governor Edmund G. Brown Jr. on June 24, 2015. Sections 15 through 18 of SB 88 add measurement and reporting requirements for water right holders and claimants who divert 10 acre-feet of water or more per year. Permittee agrees to provide the same information reported to the

Water Board pursuant to SB 88 to CDFW by December 31 of each year this Agreement is in effect.

CONTACT INFORMATION

Any communication that Permittee or CDFW submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or CDFW specifies by written notice to the other.

Permittee:

Mr. Doug Cole
Marble Mountain Ranch
92520 CA-96
Somes Bar, CA 95568
Phone: (530) 469-3322

CDFW:

Department of Fish and Wildlife
Northern Region
601 Locust Street
Redding, CA 96001
Attn: Michael R. Harris
Michael.R.Harris@wildlife.ca.gov

LIABILITY

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with the project. The decision to proceed with the project is Permittee's alone.

SUSPENSION AND REVOCATION

CDFW may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before CDFW suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

ENFORCEMENT

Nothing in the Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

OTHER LEGAL OBLIGATIONS

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or an activity related to it.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC sections 2050 *et seq.* (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

AMENDMENT

CDFW may amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

TRANSFER AND ASSIGNMENT

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

EXTENSIONS

In accordance with FGC section 1605(b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to CDFW a completed CDFW "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (FGC section 1605(f)).

EFFECTIVE DATE

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under CEQA; and 3) after payment of the applicable FGC section 711.4 filing fee listed at <https://www.wildlife.ca.gov/Conservation/CEQA/Fees>.

TERM

This Agreement shall expire on five (5) years from date it is fully executed, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

AUTHORIZATION

This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may

be subject to civil or criminal prosecution for failing to notify CDFW in accordance with FGC section 1602.

CONCURRENCE

The undersigned accepts and agrees to comply with all provisions contained herein.

FOR MARBLE MOUNTAIN RANCH

Doug Cole

Date

FOR DEPARTMENT OF FISH AND WILDLIFE

Curt Babcock
Habitat Conservation Program Manager

Date

Prepared by: Michael R. Harris
Senior Environmental Scientist Supervisor