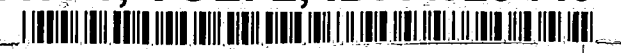


266.1 GEORGIA -PACIFIC WEST INC.

COUNTY: SISKIYOU

WR-5  
CAT: 1, VOL: 2, ID: A029449



COUNTY: SISKIYOU

CAT: CORRESPONDENCE

BEGIN DATE: 10/1/2000

END DATE:

CAT: 1, VOL: 2, ID: A029449



A029449 % 1 % 2

APPLICANT: DOUGLAS T. COLE

ADDRESS: 92520 HIGHWAY 96  
SOMES BAR, CA 95568

MINIMUM FILING FEE: \$100.00  
 FILE ORIGINAL & ONE COPY  
 TYPE OR PRINT IN BLACK INK  
 (For explanation of entries required, see booklet "How to File an Application to Appropriate Water in California")

STATE OF CALIFORNIA  
 State Water Resources Control Board  
 DIVISION OF WATER RIGHTS  
 901 P Street, Sacramento  
 P. O. Box 2000, Sacramento, CA 95810

STATE WATER RESOURCES CONTROL BOARD

1989 MAR 27 PM 4: 25

DIV. OF WATER RIGHTS  
 SACRAMENTO

(Check one box only)

- APPLICATION TO APPROPRIATE WATER BY PERMIT  
 or  
 REGISTRATION OF SMALL DOMESTIC USE APPROPRIATION

(If this form is used to register a small domestic use appropriation, the terms "application" and "applicant" herein, and in related forms, shall mean "registration" and "registrant".)

Application No. 29449

29449

(Leave blank)

1. APPLICANT

*per 11/17/94 letter*  
~~DOUG COBLE, Heidi Cole, Norma D. Cole, Caroline Cole~~  
 ROBERT E. & MARY JUDITH YOUNG

(916) 469-3322

(Name of applicant)

(Telephone number where you may be reached between 8 a. m. and 5 p. m. - include area code)

~~YOUNG'S RANCH 912520 Highway 916~~

SOMES BAR

CALIFORNIA

95568

(Mailing address)

(City or town)

(State)

(Zip code)

2. SOURCE

a. The name of the source at the point of diversion is STANSHAW CREEK  
 (If unnamed, state that it is an unnamed stream, spring, etc.)

tributary to KLAMATH RIVER, THENCE PACIFIC OCEAN

b. In a normal year does the stream dry up at any point downstream from your project? YES  NO  If yes, during what months is it usually dry? From \_\_\_\_\_ to \_\_\_\_\_

What alternate sources are available to your project should a portion of your requested direct diversion season be excluded because of a dry stream or nonavailability of water? NONE

3. POINTS OF DIVERSION and REDIVERSION

a. The point(s) of diversion will be in the County of SISKIYOU

b. List all points giving coordinate distances from section corner or other tie as allowed by Board regulations i. e. California Coordinate System

Point is within (40-acre subdivision)	Section PROS.	Township	Range	Base and Meridian
2500 ft. W, 1500 fts NE Corner	SW 1/4 of NE 1/4	33	13N 6E	H
785,300' N, 1,589,300' E	1/4 of 1/4			
CA COORD. ZONE 1	1/4 of 1/4			

c. Does applicant own the land at the point of diversion? YES  NO

d. If applicant does not own the land at point of diversion, state name and address of owner and what steps have been taken to obtain right of access: Applicant has a recorded easement, U.S. Forest Service, Somes Bar, California

4. PURPOSE of USE, AMOUNT and SEASON

a. In the table below, state the purpose(s) for which water is to be appropriated, the quantities of water for each purpose, and the dates between which diversions will be made. Use gallons per day if rate is less than 0.025 cubic foot per second (approximately 16,000 gallons per day). Purpose must only be "Domestic" for registration of small domestic use.\*

PURPOSE OF USE (Irrigation, Domestic, etc.)	DIRECT DIVERSION				STORAGE		
	QUANTITY		SEASON OF DIVERSION		AMOUNT	COLLECTION SEASON	
	RATE (Cubic feet per second or gallons per day)	AMOUNT (Acre-feet per year)	Beginning Date (Mo. & Day)	Ending date (Mo. & Day)	Acre-feet per annum	Beginning Date (Mo. & Day)	Ending date (Mo. & Day)
Hydroelectric	3.0 cfs	2168.1	1/1	12/31			
<del>Fish Enhancement</del>	<del>1.0 cfs</del>	<del>722.7</del>	<del>1/1</del>	<del>12/31</del>			
		2890.8	TOTAL AMOUNT			TOTAL AMOUNT	

b. Total combined amount taken by direct diversion and storage during any one year will be 2890.8 acre-feet.

\* Not to exceed 4,500 gallons per day by direct diversion or 10 acre-feet per annum by storage.

**5. JUSTIFICATION OF AMOUNT** (For small domestic use registration, complete item b. only)

a. IRRIGATION: Maximum area to be irrigated in any one year is \_\_\_\_\_ acres.

CROP	ACRES	METHOD OF IRRIGATION (Sprinklers, flooding, etc.)	ACRE-FEET PER YEAR	NORMAL SEASON	
				Beginning date	Ending date

b. DOMESTIC: Number of residences to be served is \_\_\_\_\_. Separately owned? YES  NO   
 Total number of people to be served is \_\_\_\_\_. Estimated daily use per person is \_\_\_\_\_ (Gallons per day)  
 Total area of domestic lawns and gardens is \_\_\_\_\_ square feet.  
 Incidental domestic uses are \_\_\_\_\_  
 (Dust control area, number and kind of domestic animals, etc.)

c. STOCKWATERING: Kind of stock \_\_\_\_\_ Maximum number \_\_\_\_\_ Describe type of operation: \_\_\_\_\_  
 (Feed lot, dairy, range, etc.)

d. RECREATIONAL: Type of recreation: Fishing  Swimming  Boating  Other

e. MUNICIPAL: (Estimated projected use)

POPULATION 5-year periods until use is completed		MAXIMUM MONTH		ANNUAL USE		
PERIOD	POP.	Average daily use per capita (gal.)	Rate of diversion (cfs)	Average daily use (gal. per capita)	Acre-foot (per capita)	Total acre-feet
Present						

Month of maximum use during year is \_\_\_\_\_. Month of minimum use during year is \_\_\_\_\_.

f. HEAT CONTROL: The total area to be heat protected is \_\_\_\_\_ net acres.  
 Type of crop protected is \_\_\_\_\_  
 Rate at which water is applied to use is \_\_\_\_\_ gpm per acre.  
 The heat protection season will begin about \_\_\_\_\_ (Date) and end about \_\_\_\_\_ (Date)

g. FROST PROTECTION: The total area to be frost protected is \_\_\_\_\_ net acres.  
 Type of crop protected is \_\_\_\_\_  
 Rate at which water is applied to use is \_\_\_\_\_ gpm per acre.  
 The frost protection season will begin about \_\_\_\_\_ (Date) and end about \_\_\_\_\_ (Date)

h. INDUSTRIAL: Type of industry is \_\_\_\_\_  
 Basis for determination of amount of water needed is \_\_\_\_\_

i. MINING: The name of the claim is \_\_\_\_\_ Patented  Unpatented   
 The nature of the mine is \_\_\_\_\_ Mineral to be mined is \_\_\_\_\_  
 Type of milling or processing is \_\_\_\_\_  
 After use, the water will be discharged into \_\_\_\_\_ (Name of stream)  
 in \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of Section \_\_\_\_\_, T \_\_\_\_\_, R \_\_\_\_\_, \_\_\_\_\_ B. & M.  
 (40-acre subdivision)

j. POWER: The total fall to be utilized is 200 feet. The maximum amount of water to be used through the penstock works is 2.5 cubic feet per second. The maximum theoretical horsepower capable of being generated by the works is 56.8. Electrical capacity is 33.9 kilowatts at .80 % efficiency.  
 (Cubic feet per second x fall ÷ 8.8) (Hp x 0.746 x efficiency)  
 After use, the water will be discharged into Irving Creek (Name of stream)  
 in NW 1/4 of NE 1/4 of Section 4, T 12N, R 6E, H B. & M. FERC No. NONE  
 (40-acre subdivision)

*turbine installed in 1940 per 4/13/93 etc*

k. FISH AND WILDLIFE PRESERVATION AND/OR ENHANCEMENT: YES  NO  If yes, list specific species and habitat type that will be preserved or enhanced in item 17 of Environmental Information form WR 1-2.

l. OTHER: Describe use: \_\_\_\_\_ Basis for determination of amount of water needed is \_\_\_\_\_

**6. PLACE OF USE**

- a. Does applicant own the land where the water will be used? YES  NO  Is land in joint ownership? YES  NO   
 (All joint owners should include their names as applicants and sign the application.)  
 If applicant does not own land where the water will be used, give name and address of owner and state what arrangements have been made with the owner.

11/8/99 CR b.  
 See 11/15/99 memo  
 ym

USE IS WITHIN (40-acre subdivision)	SECTION	TOWNSHIP	RANGE	BASE & MERIDIAN	IF IRRIGATED	
					Number of acres	Presently cultivated (Y/N)
<del>SW 1/4 of SE 1/4</del>	projected 33	13N	6E	Humboldt		
<del>SE 1/4 of SW 1/4</del>	33	13N	6E	Humboldt		
<del>NE 1/4 of SW 1/4</del>	33	13N	6E	Humboldt		
<del>NW 1/4 of SW 1/4</del>	33	13N	6E	Humboldt		
<del>SW 1/4 of SW 1/4</del>	33	13N	6E	Humboldt		
<del>NE 1/4 of SE 1/4</del>	32	13N	6E	Humboldt		

(If area is unsurveyed, state the location as if lines of the public land survey were projected, or contact the Division of Water Rights. If space does not permit listing all 40-acre tracts, include on another sheet or state sections, townships and ranges, and show detail on map.)

**7. DIVERSION WORKS**

- a. Diversion will be by gravity by means of FLUMES AND PIPE  
 (Dam, pipe in unobstructed channel, pipe through dam, siphon, weir, gate, etc.)
- b. Diversion will be by pumping from \_\_\_\_\_ Pump discharge rate \_\_\_\_\_ Horsepower \_\_\_\_\_  
 (Sump, offset well, channel, reservoir, etc.) (cfs or gpd)
- c. Conduit from diversion point to first lateral or to offstream storage reservoir:

CONDUIT (Pipe or channel)	MATERIAL (Type of pipe or channel lining) (Indicate if pipe is buried or not)	CROSS SECTIONAL DIMENSION (Pipe diameter or ditch depth and top and bottom width)	LENGTH (Feet)	TOTAL LIFT OR FALL		CAPACITY (Estimate)
				Feet	+ or -	
Channel	Earthen	12" in. deep 24" in. wide	5,200'	40'	10'	3.2 cfs
Pipe	Steel (not buried)	16" in. diameter	455'	200'	1'	3.2 cfs

- d. Storage reservoirs: (For underground storage, complete Supplement 1 to WR1, available upon request.)

Name or number of reservoir, if any	DAM			RESERVOIR			
	Vertical height from downstream toe of slope to spillway level (ft.)	Construction material	Dam length (ft.)	Freeboard Dam height above spillway crest (ft.)	Approximate surface area when full (acres)	Approximate capacity (acre-feet)	Maximum water depth (ft.)

- e. Outlet pipe: (For storage reservoirs having a capacity of 10 acre-feet or more.)

Diameter of outlet pipe (inches)	Length of outlet pipe (feet)	FALL (Vertical distance between entrance and exit of outlet pipe in feet)	HEAD (Vertical distance from spillway to outlet pipe in reservoir in feet)	Estimated storage below outlet pipe entrance (dead storage)

- f. If water will be stored and the reservoir is not at the point of diversion, the maximum rate of diversion to offstream storage will be \_\_\_\_\_ cfs. Diversion to offstream storage will be made by:  Pumping  Gravity

**8. COMPLETION SCHEDULE**

- a. Year work will start NOT APPLICABLE b. Year work will be completed \_\_\_\_\_  
 c. Year water will be used to the full extent intended \_\_\_\_\_ d. If completed, year of first use \_\_\_\_\_

**9. GENERAL**

a. Name of the post office most used by those living near the proposed point of diversion is SOMES BAR, CALIFORNIA

b. Does any part of the place of use comprise a subdivision on file with the State Department of Real Estate? YES  NO   
 If yes, state name of the subdivision \_\_\_\_\_

If no, is subdivision of these lands contemplated? YES  NO

Is it planned to individually meter each service connection? YES  NO  If yes, When? \_\_\_\_\_

c. List the names and addresses of diverters of water from the source of supply downstream from the proposed point of diversion: \_\_\_\_\_  
 \_\_\_\_\_

d. Is the source used for navigation, including use by pleasure boats, for a significant part of each year at the point of diversion, or does the source substantially contribute to a waterway which is used for navigation, including use by pleasure boats? YES  NO  If yes, explain: THE SOURCE CONTRIBUTES TO THE KLAMATH RIVER WHICH IS USED BY PLEASURE BOATS.

**10. EXISTING WATER RIGHT**

Do you claim an existing right for the use of all or part of the water sought by this application? YES  NO   
 If yes, complete table below:

Nature of Right (riparian, appropriative, groundwater.)	Year of First Use	Purpose of use made in recent years including amount, if known	Season of Use	Source	Location of Point of Diversion
Pre-1914 appropriative	1867	Domestic, Irrigation Hydroelectric generation	Year-round	Stanshaw Creek	same as 3b above

**11. AUTHORIZED AGENT (Optional)**

With respect to  all matters concerning this water right application  those matters designated as follows:

~~THOMAS W. BIRMINGHAM~~ (Name of agent) ~~(916) 444-8920~~ (Telephone number of agent between 8 a. m. and 5 p. m.)  
~~770 L Street, Suite 1200~~ ~~Sacramento~~ ~~California~~ ~~95814~~  
 (Mailing address) (City or town) (State) (Zip code)

is authorized to act on my behalf as my agent.

**12. SIGNATURE OF APPLICANT**

I (we) declare under penalty of perjury that the above is true and correct to the best of my (our) knowledge and belief.  
 Dated March 17 1989, at Sacramento, California

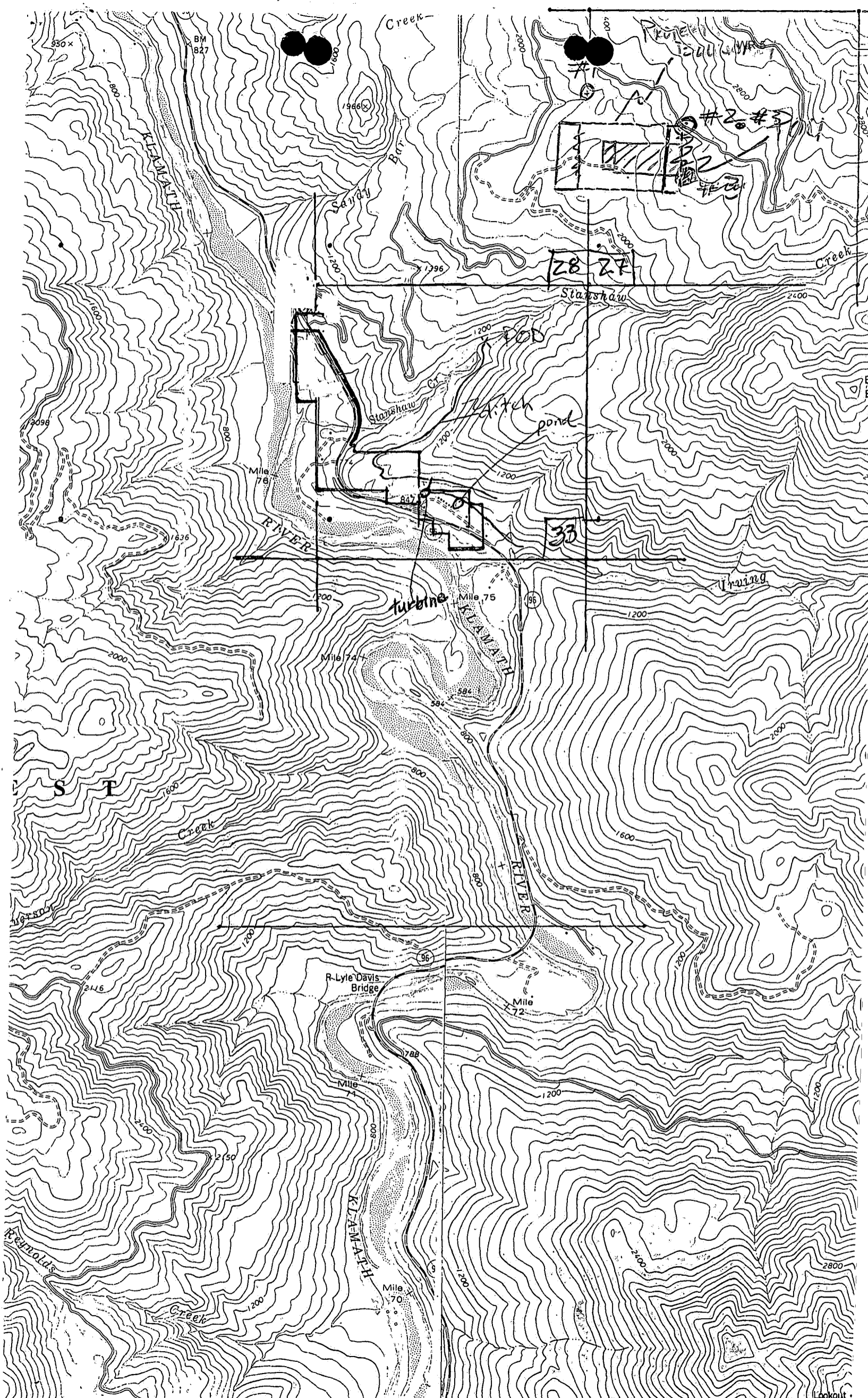
(If there is more than one owner of the project, please indicate their relationship.)

Ms. Mr. \_\_\_\_\_  
 Miss. Mrs. Thomas W. Birmingham (Signature of applicant)  
**THOMAS W. BIRMINGHAM, ESQ.**  
 For Applicants  
 Ms. Mr. \_\_\_\_\_  
 Miss. Mrs. \_\_\_\_\_ (Signature of applicant)

Additional information needed for preparation of this application may be found in the Instruction Booklet entitled "HOW TO FILE AN APPLICATION TO APPROPRIATE WATER IN CALIFORNIA". If there is insufficient space for answers in this form, attach extra sheets. Please cross-reference all remarks to the numbered item of the application to which they may refer. Send original application and one copy to the STATE WATER RESOURCES CONTROL BOARD, DIVISION OF WATER RIGHTS, P. O. Box 2000, Sacramento, CA 95810, with \$100 minimum filing fee.

**NOTE:**

If this application is approved for a permit, a minimum permit fee of \$100 will be required before the permit is issued. There is no additional fee for registration of small domestic use.

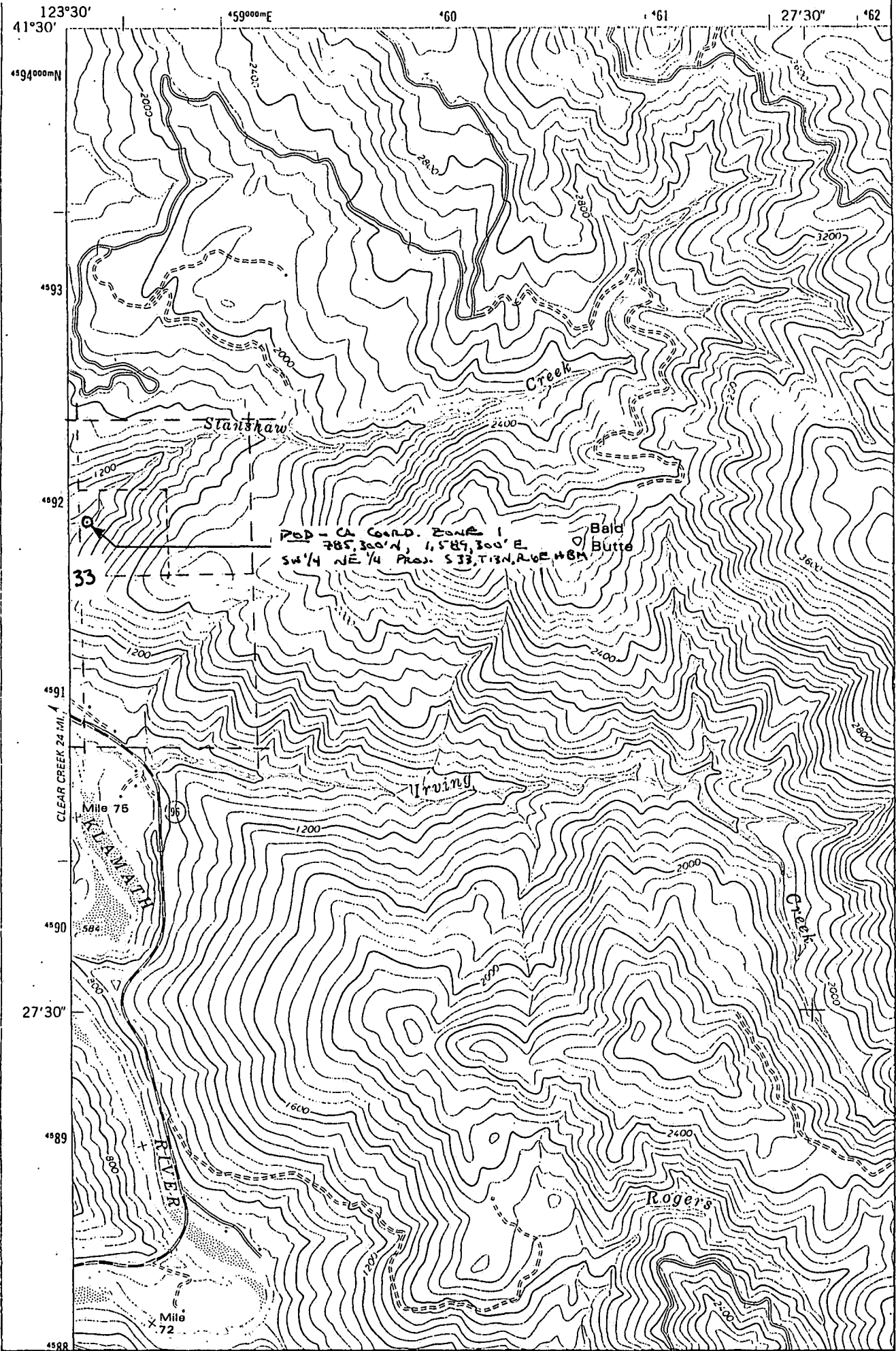


— Cole Diversion 3.11 CFS

— BRICKELL

000467

Lookout



APPLICANT ROBERT E & MARY  
JUDITH YOUNG  
 DIVERSION WITHIN SW 1/4 NE 1/4 OF  
 SECTION 33, T. 13N, R. 6E, H. B&M  
 COUNTY OF SISKIYOU  
 U.S.G.S. Quad SOMES BAR Map Code B7  
 Scale 1:24,000 Contour Interval

STATE OF CALIFORNIA  
 STATE WATER RESOURCES CONTROL BOARD  
 DIVISION OF WATER RIGHTS

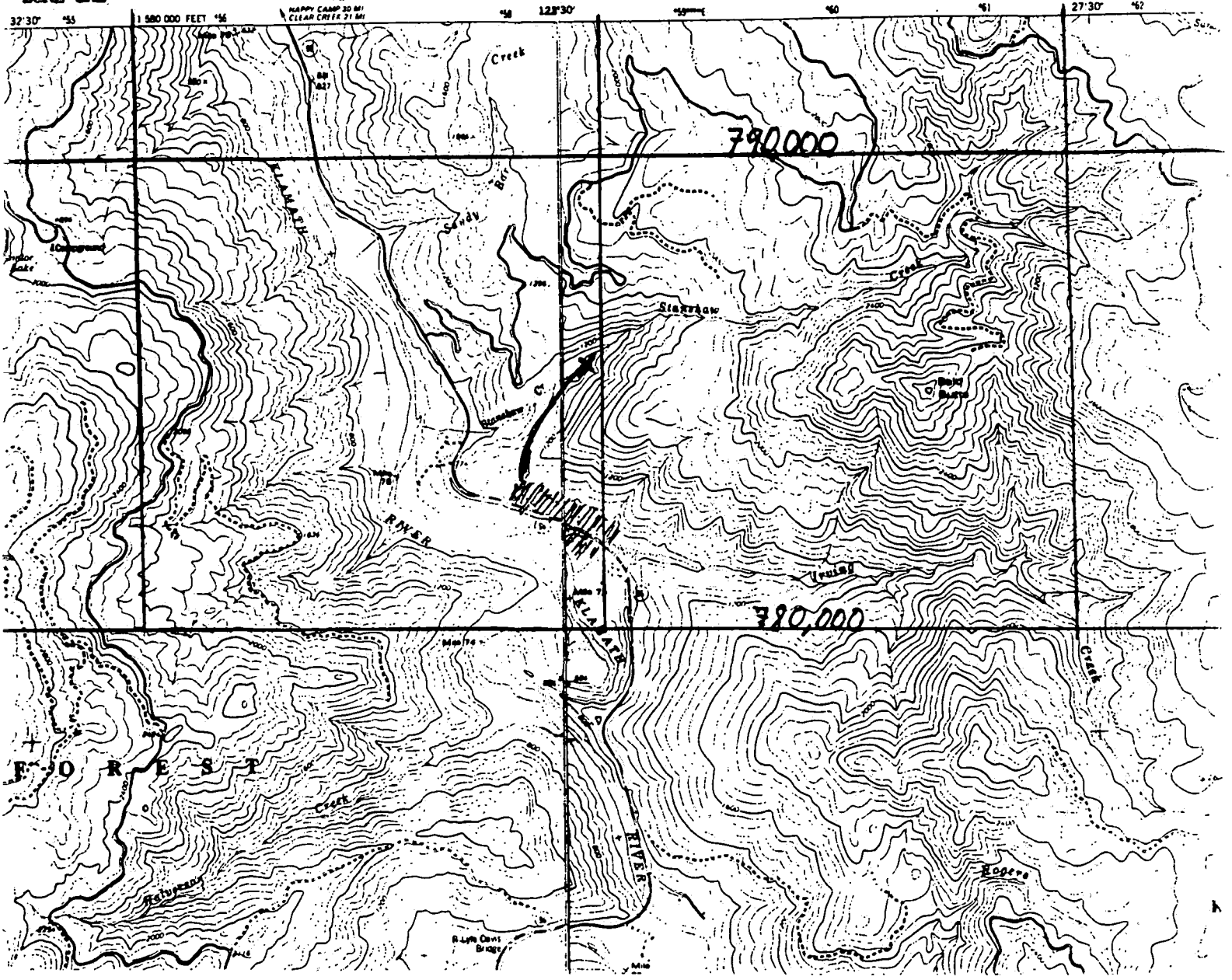
APPLICATION 29449

PERMIT

LICENSE

DATE: \_\_\_\_\_ DRAWN BY: \_\_\_\_\_





Approximate point of diversion,  
Approximate course of conveyance, and  
Approximate place of use.

This information is based on a verbal description from the Applicants'; a more detailed map will be filed within 30 days of the date of this Application.



GOVERNMENTAL REQUIREMENTS

Before a final decision can be made on your water right application, we must consider the information contained in an environmental document prepared in compliance with the requirements of CEQA. If an environmental document has been prepared for your project by another agency, we must consider it. If one has not been prepared, a determination must be made as to who is responsible for the preparation of the environmental document for your project. The following questions are to aid us in that determination.

2. Contact your county planning or public works department for the following information:

(a) Assessor's Parcel No. \_\_\_\_\_

(b) County Zoning Designation ~~Rural Residential~~ Multiple family residential <sup>CR</sup> <sub>FR</sub>

(c) Will the county have to issue any permits or approvals for your project? No If yes, check appropriate spaces below:  
\_\_\_\_ Grading Permit, \_\_\_\_ Use Permit, \_\_\_\_ Watercourse  
Obstruction Permit, \_\_\_\_ Change of Zoning, \_\_\_\_ General Plan  
Change, \_\_\_\_ Other: \_\_\_\_\_

(d) If any permits have been obtained list permit type and permit number: \_\_\_\_\_

(e) Person contacted Marty Taylor Date of contact 3/14/89  
Department Planning Department Telephone (916) 842-8200

3. Are any additional state or federal permits required for your project? (i.e., Federal Energy Regulatory Commission, U.S. Forest Service, Bureau of Land Management, Soil Conservation Service, Department of Water Resources (Division of Dam Safety), Reclamation Board, Coastal Commission, State Lands Commission, etc.)

For each agency from which a permit is required provide the following information:

Permit type None required

Person contacted \_\_\_\_\_ Agency \_\_\_\_\_

Date of contact \_\_\_\_\_ Telephone ( ) \_\_\_\_\_

4. Has your agency, if it is a public agency, or any permitting agency prepared any environmental documents for your project? \_\_\_\_\_

If so, you must submit a copy of the latest environmental document with this application, including a copy of the notice of determination.

If not, will any environmental documents be prepared by any permitting agency, or will you be preparing environmental documents for your project? \_\_\_\_\_ If so, explain: \_\_\_\_\_

**Note:** When completed, the final environmental document (including notice of determination) or notice of exemption must be submitted to the Board. Processing of your water right application cannot proceed until such documents are submitted.

5. Will your project, during construction or operation, generate waste or wastewater containing such things as sewage, industrial chemicals, metals, or agricultural chemicals, or cause erosion, turbidity or sedimentation? No If so, explain: \_\_\_\_\_

If you answered yes or you are unsure of your answer, contact your local Regional Water Quality Control Board for the following information (See attachment for address and telephone number):

Will a waste discharge permit be required for your project? \_\_\_\_\_

Person contacted \_\_\_\_\_ Date of contact \_\_\_\_\_

What method of treatment and disposal will be used? \_\_\_\_\_

6. Have any archeological reports been prepared on this project, or will you be preparing an archeological report to satisfy another public agency? No

Do you know of any archeological or historic sites located within the general project area? \_\_\_\_\_ If so, explain: \_\_\_\_\_

ENVIRONMENTAL SETTING

7(a) Describe the current land use of the area at the point of water diversion, immediately downstream of the diversion, and at the place where the water is to be used. Attach photographs of these areas. Date and label photos.

Point of diversion: The point of diversion is on land owned by the United States Forest Service and is open space.

Downstream of diversion: same

Place of use: resort and agriculture

(b) Describe the types of existing vegetation at the point of diversion, immediately downstream of the point of diversion, and at the place where the water is to be used. These vegetation types should be shown in the photographs submitted.

Point of diversion: unknown

Downstream of diversion: unknown

Place of Use: unknown

8. What changes in the project site and surrounding area will occur or are likely to occur because of construction and operation of your project? Include in your answer such things as approximate number and size/age of trees to be removed or areas of vegetation/brush removal; area or extent of streambed alteration, trenching, grading, excavation, plowing, or road, dam or building construction; etc. Consider all aspects of your project, including diversion structure, pipelines or ditches, water use, and changes at the place of use.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_

FISH AND WILDLIFE CONCERNS

Contact your regional office of the State Department of Fish and Game (DFG) to obtain the information requested in questions 9 through 17 (see page 6 for address and telephone number):

9. Person contacted Dave Hoopaugh  
Date of contact 3/15/89 Telephone (916) 225-2373

10. According to the DFG representative, when did or when will a DFG representative visit the project site area? Not needed

What is the name of the DFG representative who made or will make the inspection of the project site area? \_\_\_\_\_

11. According to the DFG representative, will this project require a Streambed Alteration Agreement? No

12. According to the DFG representative, do any resident or migratory game or non-game fish species occur in the affected stream? Yes  
If so, what species? Steelhead, resident trout

What season of the year do they occur in the stream? Year-round

13. According to the DFG representative, do any plants or animals which are (1) federally identified as candidate, threatened, or endangered; (2) state listed as rare, threatened, or endangered; or (3) listed by the DFG Natural Diversity Data Base, occur in the project area? No  
Will they be impacted in any way by the project? No  
If so, identify the species and explain how they will be impacted:

14. Does the DFG representative expect that your project will have an adverse effect on any resident or migratory fish populations, any wildlife populations, or any rare or endangered plant or animal species? Yes If so, explain: If all flow is diverted from  
the stream.

15. What measures relating to your project have been proposed by the DFG representative to protect fish, wildlife or endangered or rare species: Minimum fish flows.

16. Will you make changes in your project as recommended by DFG? \_\_\_\_\_

If not, explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17. If your application lists wildlife enhancement as a proposed use, what specific species or habitat type will be enhanced? \_\_\_\_\_  
Steelhead

According to the DFG representative, does your proposed project utilize a sound technique for the purpose of wildlife enhancement?  
Yes

EXISTING STORAGE OR DIVERSIONS

If you currently have an interest in any other water projects which store or divert water and this application requests additional water from the same watershed, answer the following additional question for each project:

18. Does the project have fish and wildlife protection requirements? \_\_\_\_\_  
If so, list the permit number and specific protection requirements for each project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_

CERTIFICATION

I hereby certify that the statements I have furnished above and in the attached exhibits are complete to the best of my ability, and that the facts, statements, and information presented are true and correct to the best of my knowledge.

Date March 17, 1989 Signature *Thomas G. Remington*

STATE OF CALIFORNIA  
DEPARTMENT OF FISH AND GAME

★ **CENTRAL OFFICE**  
1416 Ninth Street  
Sacramento, CA 95814  
Information: (916) 445-3531

• **REGIONAL OFFICES**

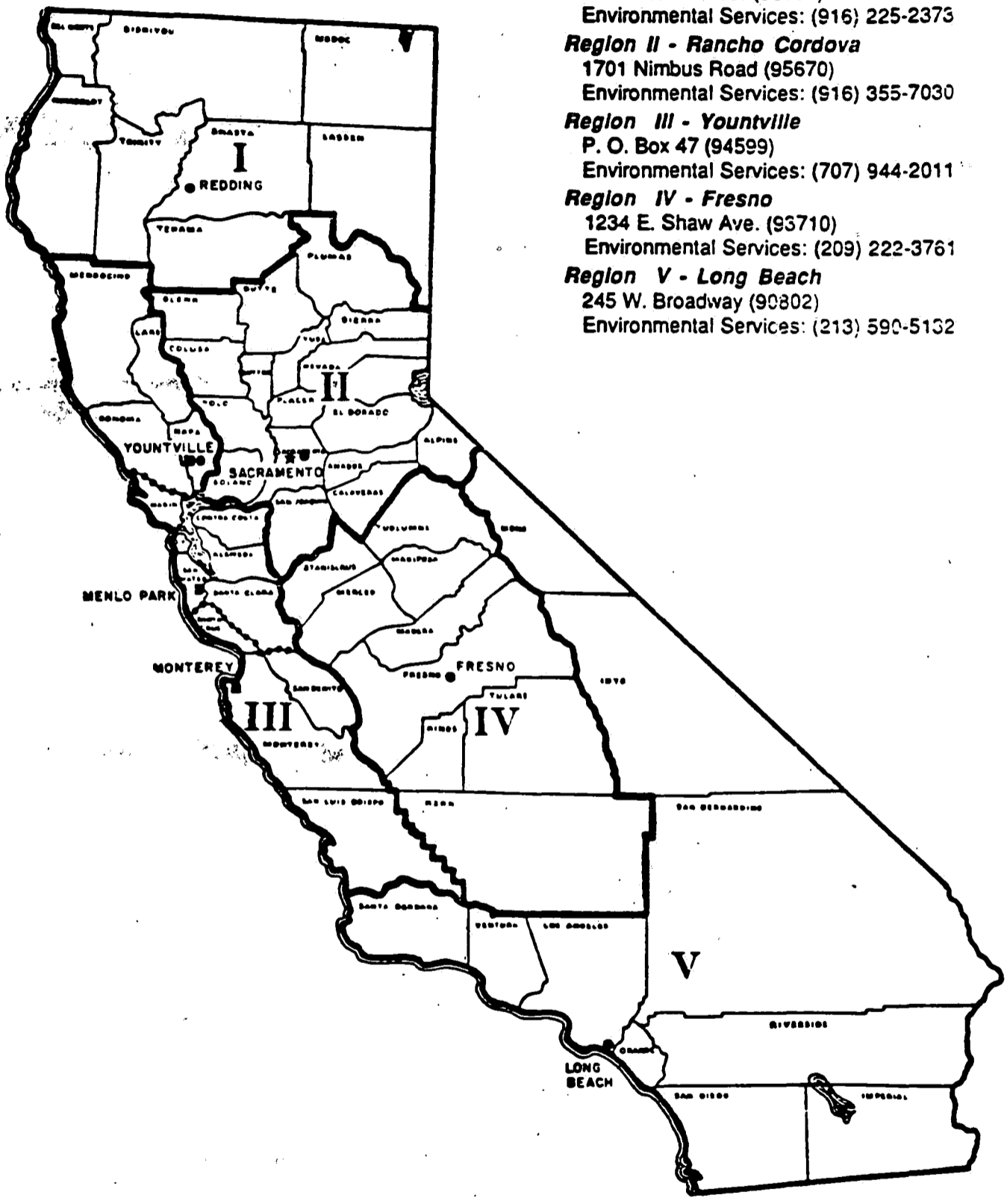
**Region I - Redding**  
P. O. Box 1480  
601 Locust Street (96001)  
Environmental Services: (916) 225-2373

**Region II - Rancho Cordova**  
1701 Nimbus Road (95670)  
Environmental Services: (916) 355-7030

**Region III - Yountville**  
P. O. Box 47 (94599)  
Environmental Services: (707) 944-2011

**Region IV - Fresno**  
1234 E. Shaw Ave. (93710)  
Environmental Services: (209) 222-3761

**Region V - Long Beach**  
245 W. Broadway (90802)  
Environmental Services: (213) 590-5132



ATTACHMENT A

Three residences  
Forty-four recreational vehicle hook-ups  
Eleven housekeeping units  
Fourteen mobile homes  
One lodge



STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Water Right Application 29449

Douglas Cole, Heidi Cole, Norman Cole and Caroline Cole

ORDER CANCELING WATER RIGHT APPLICATION

SOURCE: Stanshaw Creek tributary to the Klamath River

COUNTY: Siskiyou

WHEREAS:

1. Douglas Cole, Heidi Cole, Norman Cole and Caroline Cole (Applicants) filed a water right application with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), on March 27, 1989, requesting the right to divert 2,809.8 acre-feet per year from Stanshaw Creek.
2. Application 29449 was noticed on January 28, 2000 and re-noticed on March 17, 2000. One protest was received based on potential impacts to prior rights and five protests were received based on potential impacts to fisheries resources in Stanshaw Creek, including Coho salmon (*Oncorhynchus kisutch*). 10/20/12 - S/M
3. By letters dated March 30, 2012 and November 2, 2012, the Division requested that the Applicants submit a plan to supply information necessary to document compliance with Water Code section 1275, subdivision (b). The Division allowed 60 days and 30 days, respectively, for the Applicants to respond. The letter contained a warning that failure to submit the information requested within the time period provided could result in the cancellation of the application under Water Code section 1276. To date, the Division has not received the required information.
4. The Applicants, after due notice, have failed to submit information requested pursuant to section 1275 of the Water Code or to show good cause why additional time should be allowed. (Wat. Code, § 1276.)
5. Pursuant to Resolution No. 2012-0029, the State Water Board has delegated authority to the Deputy Director for Water Rights (Deputy Director) to cancel applications. (Resolution No. 2012-0029, section 4.5.2.) Resolution No. 2012-0029 authorizes the Deputy Director to redelegate this authority, and this authority has been so-redelegated by memorandum dated July 6, 2012.

Application 29449  
Page 2 of 2

**THEREFORE, IT IS ORDERED THAT APPLICATION 29449 IS HEREBY CANCELED.**

It is Applicants' responsibility to remove or modify diversion works and impoundments to ensure that water subject to this cancellation is not diverted and used. Applicants are hereby put on notice that unauthorized diversion and use of water is considered a trespass and subject to enforcement action under Water Code sections 1052 and 1831. Pursuant to Water Code section 1052, any diversion of water from the point of diversion identified in this application may be subject to Administrative Civil Liability of up to \$500 per day without further notice. The State Water Board also may issue a Cease and Desist Order in response to an unauthorized diversion or threatened unauthorized diversion pursuant to Water Code section 1831.

Before initiating any work in a stream channel, Applicants should consult with the Department of Fish and Game and the Regional Water Quality Control Board to ensure that removal of project facilities does not adversely affect a fishery or result in unregulated sediment discharge to a waterway. Applicants must also consult with the Department of Water Resources, Division of Safety of Dams, if a jurisdictional size dam will be removed or breached (dam height 25 feet or more, or reservoir volume 50 acre-feet or more). These agencies may require a permit or other approval prior to any construction activity.

Applicant shall document any diversions made under claim of right independent of a permit, license, registration or certification issued by the State Water Board, such as diversions under riparian or pre-1914 rights. With limited exceptions, Water Code section 5101 requires that a Statement of Water Diversion and Use be filed for these diversions. Water Code section 5107 (c)(1) provides that the State Water Board may impose a civil liability of \$1,000, plus \$500 per day for each additional day on which the violation continues if the person fails to file a statement within 30 days after the board has called the violation to the attention of that person. These penalties are in addition to any penalties that may be imposed if the diverter does not hold a valid right or diverts in excess of what is authorized under that right.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*James W. Kassei*

*to Barbara Evoy, Deputy Director  
Division of Water Rights*

Dated: **JAN 07 2013**

MMcCarthy.GHernandez 12/06/2012.

U:\PALDRV\MMcCarthy\A029449 (Cole)\Cancellation\cancel\_order.docx

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

**DIVISION OF WATER RIGHTS**

---

In the Matter of Water Right Application 29449

**Douglas Cole, Heidi Cole, Norman Cole and Caroline Cole**

**ORDER CANCELING WATER RIGHT APPLICATION**

---

SOURCE: Stanshaw Creek tributary to the Klamath River

COUNTY: Siskiyou

---

**WHEREAS:**

1. Douglas Cole, Heidi Cole, Norman Cole and Caroline Cole (Applicants) filed a water right application with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), on March 27, 1989, requesting the right to divert 2,809.8 acre-feet per year from Stanshaw Creek.
2. Application 29449 was noticed on January 28, 2000 and re-noticed on March 17, 2000. One protest was received based on potential impacts to prior rights and five protests were received based on potential impacts to fisheries resources in Stanshaw Creek, including Coho salmon (*Oncorhynchus kisutch*).
3. By letters dated March 30, 2012 and November 2, 2012, the Division requested that the Applicants submit a plan to supply information necessary to document compliance with Water Code section 1275, subdivision (b). The Division allowed 60 days and 30 days, respectively, for the Applicants to respond. The letter contained a warning that failure to submit the information requested within the time period provided could result in the cancellation of the application under Water Code section 1276. To date, the Division has not received the required information.
4. The Applicants, after due notice, have failed to submit information requested pursuant to section 1275 of the Water Code or to show good cause why additional time should be allowed. (Wat. Code, § 1276.)
5. Pursuant to Resolution No. 2012-0029, the State Water Board has delegated authority to the Deputy Director for Water Rights (Deputy Director) to cancel applications. (Resolution No. 2012-0029, section 4.5.2.) Resolution No. 2012-0029 authorizes the Deputy Director to redelegate this authority, and this authority has been so redelegated by memorandum dated July 6, 2012.

Application 29449  
Page 2 of 2

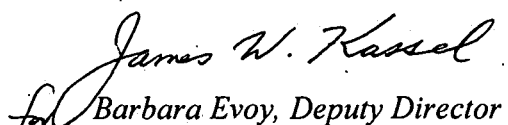
**THEREFORE, IT IS ORDERED THAT APPLICATION 29449 IS HEREBY CANCELED.**

It is Applicants' responsibility to remove or modify diversion works and impoundments to ensure that water subject to this cancellation is not diverted and used. Applicants are hereby put on notice that unauthorized diversion and use of water is considered a trespass and subject to enforcement action under Water Code sections 1052 and 1831. Pursuant to Water Code section 1052, any diversion of water from the point of diversion identified in this application may be subject to Administrative Civil Liability of up to \$500 per day without further notice. The State Water Board also may issue a Cease and Desist Order in response to an unauthorized diversion or threatened unauthorized diversion pursuant to Water Code section 1831.

Before initiating any work in a stream channel, Applicants should consult with the Department of Fish and Game and the Regional Water Quality Control Board to ensure that removal of project facilities does not adversely affect a fishery or result in unregulated sediment discharge to a waterway. Applicants must also consult with the Department of Water Resources, Division of Safety of Dams, if a jurisdictional size dam will be removed or breached (dam height 25 feet or more, or reservoir volume 50 acre-feet or more). These agencies may require a permit or other approval prior to any construction activity.

Applicant shall document any diversions made under claim of right independent of a permit, license, registration or certification issued by the State Water Board, such as diversions under riparian or pre-1914 rights. With limited exceptions, Water Code section 5101 requires that a Statement of Water Diversion and Use be filed for these diversions. Water Code section 5107 (c)(1) provides that the State Water Board may impose a civil liability of \$1,000, plus \$500 per day for each additional day on which the violation continues if the person fails to file a statement within 30 days after the board has called the violation to the attention of that person. These penalties are in addition to any penalties that may be imposed if the diverter does not hold a valid right or diverts in excess of what is authorized under that right.

STATE WATER RESOURCES CONTROL BOARD

  
for *Barbara Evoy, Deputy Director*  
*Division of Water Rights*

Dated: **JAN 07 2013**

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Douglas Cole, et al

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City, State, ZIP+4

SOMES BAR, CA 95568

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1502 9416 3000 0152 4002

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Total Postage & Fees	\$

JAN 07 2013

Postmark  
Here

MM: 29449

Sent To

Marble Mountain Ranch  
c/o Barbara Brenner

Street, Apt. No.,  
or PO Box No.

Starbuck Road 483

City, State, ZIP+4

500 Capitol Mall, ST 1600  
Sacramento, CA 95814

9902 9476 0000 0152 4002

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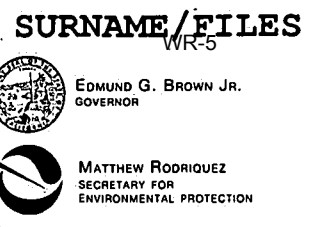
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State Water Resources Control Board

JAN 07 2013

In Reply Refer to: MJM:29449

CERTIFIED MAIL

Marble Mountain Ranch
c/o Ms. Barbara Brenner
Stoel Rives LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814

Dear Ms. Brenner:

ORDER CANCELING APPLICATION 29449, STANSHAW CREEK IN SISKIYOU COUNTY

The Division of Water Rights is canceling Application 29449, due to failure to submit information requested by the Division. An order canceling the application is enclosed.

The order can also be viewed at:

http://www.waterboards.ca.gov/waterrights/water\_issues/programs/enforcement/compliance/revocations/

If you disagree with the enclosed order, you may file a petition for reconsideration with the State Water Resources Control Board (State Water Board) to set aside the cancellation and reinstate the application in accordance with California Code of Regulations, title 23, sections 768 and 769. Section 768 requires that the petition be submitted within 30 days of the date of the order, and be based on one or more of the causes listed in that section. The petition must contain the information required by section 769.

It is your responsibility to remove or modify diversion works or impoundments to ensure that water subject to this cancellation is not diverted and used. Unauthorized diversion and use of water is considered a trespass and subject to enforcement action under Water Code sections 1052 and 1831. Pursuant to Water Code section 1052, any diversion of water from the point of diversion identified in this application may be subject to Administrative Civil Liability of up to \$500 per day without further notice. The State Water Board also may issue a Cease and Desist Order in response to an unauthorized diversion or threatened unauthorized diversion pursuant to Water Code section 1831.

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

SURNAME
DWR 340-gmh

MJM 12/14/12
1/4/13
RECYCLED PAPER

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Marble Mountain Ranch  
c/o Ms. Barbara Brenner

- 2 -

Before initiating any work in a stream channel, you should consult with the Department of Fish and Game and the Regional Water Quality Control Board to ensure that removal of project facilities does not adversely affect a fishery or result in unregulated sediment discharge to a waterway. You must also consult the Department of Water Resources, Division of Safety of Dams if a jurisdictional size dam will be removed or breached (dam height 25 feet or more, or reservoir volume 50 acre-feet or more). These agencies may require a permit or other approval prior to any construction activity.

Some diverters claim rights to divert independent of a permit, license, registration or certification issued by the State Water Board, such as diversions under riparian or pre-1914 rights. With limited exceptions, Water Code section 5101 requires that a Statement of Water Diversion and Use be filed for these diversions. Water Code section 5107 (c)(1) provides that the State Water Board may impose a civil liability of \$1,000, plus \$500 per day for each additional day on which the violation continues if the person fails to file a statement within 30 days after the board has called the violation to the attention of that person. These penalties are in addition to any penalties that may be imposed if the diverter does not hold a valid right or diverts in excess of what is authorized under that right. This letter serves as your notice of the statement requirement and potential penalty.

If you require further assistance, please contact Matt McCarthy at (916) 341-5310 or [mmccarthy@waterboards.ca.gov](mailto:mmccarthy@waterboards.ca.gov). Written correspondence or inquiries should be addressed as follows: State Water Resources Control Board, Division of Water Rights, Attn: Matt McCarthy, P.O. Box 2000, Sacramento, CA, 95812-2000.

Sincerely,

ORIGINAL SIGNED BY:

Phillip Crader, Manager  
Permitting and Licensing Section  
Division of Water Rights

Enclosure

cc (certified w/enclosure): Douglas Cole, et al.  
92520 Highway 96  
Somes Bar, CA 95568

cc (w/o enclosure): T. James Fisher, et al.  
100 Tomorrow Rd  
Somes Bar, CA 95568

Konrad Fisher  
100 Tomorrow Rd  
Somes Bar, CA 95568

California Sportfishing Protection Alliance  
1608 Francisco Street  
Berkeley, CA 94703

Marble Mountain Ranch  
c/o Ms. Barbara Brenner

- 3 -

Klamath National Forest  
Ukonom Ranger District  
c/o Mr. Jon Grunbaum  
P.O. Drawer 410  
Orleans, CA 95556

ec (w/o enclosure): State Water Resources Control Board  
Taro Murano  
[tmurano@waterboards.ca.gov](mailto:tmurano@waterboards.ca.gov)

Regional Water Quality Control Board  
Bryan McFadin  
[bmcfadin@waterboards.ca.gov](mailto:bmcfadin@waterboards.ca.gov)

Department of Fish and Game  
Jane Vorpapel  
[jvorpape@dfg.ca.gov](mailto:jvorpape@dfg.ca.gov)

National Marine Fisheries Service  
Margaret Tauzer  
[margaret.tauzer@noaa.gov](mailto:margaret.tauzer@noaa.gov)

MMcCarthy.GHernandez 12/06/2012, 12/14/2012.  
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WR-5  
EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

---

**State Water Resources Control Board**

**NOV 02 2012**

In Reply Refer to:  
MJM:A029449

Marble Mountain Ranch  
c/o Ms. Barbara Brenner  
Stoel Rives LLP  
500 Capitol Mall, Suite 1600  
Sacramento, CA 95814

Dear Ms. Brenner:

**APPLICATION 29449 OF DOUGLAS COLE, ET AL., STANSHAW CREEK TRIBUTARY TO  
KLAMATH RIVER IN SISKIYOU COUNTY**

By letter dated March 30, 2012, State Water Resources Control Board (State Water Board), Division of Water Rights (Division) staff requested that Douglas Cole (Applicant) provide a plan within sixty days to supply information necessary to document compliance with Water Code section 1275, subdivision (b). This information is necessary in order to continue processing Application 29449.

By letter dated May 29, 2012, you requested additional time to gather information about the Applicant's claim of pre-1914 right. Division staff granted your request. In your letter, however, you indicated that it had become apparent that the Applicant holds a valid pre-1914 water right that would negate the need for Application 29449.

By letter dated October 1, 2012, you provided information regarding the Applicant's claim of pre-1914 right. In the letter, you state that the State Water Board has no authority to adjudicate a pre-1914 right and thus has no jurisdiction over the Applicant's pre-1914 claim of right.

**Pre-1914 Claim and Statement Requirements**

The Applicant filed Statement of Water Diversion and Use (Statement) No. 15022 with the Division on December 1, 1998. According to Division files, no Supplemental Statements have been filed pursuant to Water Code section 5104, subdivision (a). Consequently, Statement No. 15022 is inactive in the Division's records. In your October 1, 2012 letter, you indicate that the Applicant has made continuous use of water pursuant to their pre-1914 claim of right.

With limited exceptions, Water Code section 5101 requires that a Statement be filed for a diversion not covered by a permit or license. After an Initial Statement is filed, Water Code section 5104 requires Supplemental Statements to be filed at three-year intervals. Water Code section 5107, subdivision (c)(1) provides that the State Water Board may impose a civil liability of \$1,000, plus \$500 per day for each additional day on which the violation continues if the person fails to file a

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CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 J Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

Marble Mountain Ranch  
c/o Ms. Barbara Brenner

- 2 -

NOV 02 2012

Statement within 30 days after the State Water Board has called the violation to the attention of that person. These penalties are in addition to any penalties that may be imposed if the diverter does not hold a valid right or diverts in excess of what is authorized under that right. This letter serves as your notice of the Statement requirement and potential penalty. You should immediately file a new Statement, or contact Mr. Bob Rinker to see if Statement No. 15022 can be reactivated so you can file online Supplemental Statements. Mr. Rinker can be reached at (916)-322-3143 or by email at [rrinker@waterboards.ca.gov](mailto:rrinker@waterboards.ca.gov).

### Request for Information

In the Division's March 30, 2012 letter, the Division threatened cancellation of Application 29449, pursuant to Water Code section 1276, if the requested information was not received within the time period specified. To date, the Division has not received the requested information. If the Division does not receive the requested information within 30 days of the date of this letter, Application 29449 will be cancelled.

Matt McCarthy is the staff person presently assigned to this matter, and he may be contacted at (916) 341-5310 or [mmccarthy@waterboards.ca.gov](mailto:mmccarthy@waterboards.ca.gov). Written correspondence or inquiries should be addressed as follows: State Water Resources Control Board; Division of Water Rights; Attn: Matt McCarthy; P.O. Box 2000; Sacramento, CA 95812-2000.

Sincerely,



Phillip Crader, Manager  
Permitting and Licensing Section  
Division of Water Rights

- cc: Marble Mountain Ranch  
c/o Douglas Cole  
92529 Highway 96  
Somes Bar, CA 95568
- ec: State Water Resources Control Board  
Matthew McCarthy  
[mmccarthy@waterboards.ca.gov](mailto:mmccarthy@waterboards.ca.gov)
- John O'Hagan  
[johagan@waterboards.ca.gov](mailto:johagan@waterboards.ca.gov)
- Taro Murano  
[tmurano@waterboards.ca.gov](mailto:tmurano@waterboards.ca.gov)
- Bob Rinker  
[rrinker@waterboards.ca.gov](mailto:rrinker@waterboards.ca.gov)
- ec: Continues on next page.

Marble Mountain Ranch  
c/o Ms. Barbara Brenner

- 3 -

WR-5

NOV 02 2012

ec: Department of Fish and Game  
Jane Vorpagel  
[jvorpage@dfg.ca.gov](mailto:jvorpage@dfg.ca.gov)

National Marine Fisheries Service  
Margaret Tauzer  
[margaret.tauzer@noaa.gov](mailto:margaret.tauzer@noaa.gov)

000490



500 Capitol Mall, Suite 1600  
Sacramento, California 95814  
main 916.447.0700  
fax 916.447.4781  
www.stoel.com

BARBARA A. BRENNER  
Direct (916) 319-4676  
babrenner@stoel.com

October 1, 2012

**VIA E-MAIL AND FIRST-CLASS MAIL**

Matt McCarthy  
State Water Resources Control Board  
Division of Water Rights  
1001 I Street, 14th Floor  
Sacramento, CA 95814

**Re: MMcCarthy: A029449/ Diversion Rights in Stanshaw Creek in Siskiyou County:  
63:MC:262.0(47-40-01);A029449**

Mr. McCarthy:

Marble Mountain Ranch (the "Ranch"), located in Skiskiyou County, is owned and operated by Douglas and Heidi Cole (the "Coles"). The Coles have diverted water from Stanshaw Creek since purchasing the property in 1994 and continue use the water to support the Ranch. Previously, the Coles have informed staff for the State Water Resources Control Board ("Board") that the right to divert the water is based on their pre-1914 appropriative rights. Accordingly, the Coles are already entitled to divert water from Stanshaw Creek for irrigation and domestic use and hydroelectric production.

Board staff contends that the Coles do not have a valid pre-1914 claim to the water rights because there is insufficient evidence that the diversion of water has been continuously maintained as to the amount diverted since December 19, 1914. (Letter from Board, September 15, 1998.) However, there is no basis for this assertion and the Coles have enclosed evidence of continuous diversion and use of water from Stanshaw Creek since the 1860's.

Moreover, under California Water Code section 1202, the Board has no jurisdiction over Marble Mountain's pre-1914 water rights. Numerous Board water right decisions and orders confirm that the Board has no authority to adjudicate a pre-1914 water right. (See Board Decisions, D934; D1282; D1290; D1324; D1379.) The Board has conceded to this fact in a letter to the Coles dated August 22, 2002, in which Edward C. Anton, Chief of the Division of Water Rights states,



Matt McCarthy  
October 1, 2012  
Page 2

“Regardless of past letters sent by the Division containing estimates of what could be diverted pursuant to a pre-1914 appropriative right claim, the Division has no adjudicatory authority to quantify such a claim. Only the courts can make this determination. ... All available evidence suggests that the diversion and use has been maintained in a diligent and continuous fashion ever since. Consequently, we believe that a court would find that the Coles have a valid claim of a pre-1914 appropriative right to divert water for the full irrigation and domestic uses currently maintained, including reasonable conveyance losses.”

Accordingly, the Board's arguments regarding the validity of the Coles pre-1914 appropriative rights are moot and Board staff has no authority to make this determination. Once the claimant of a pre-1914 water rights presents prima facie evidence of the existence of a pre-1914 right, the burden shifts to the petitioner, or in this instance Board staff, to show that the pre-1914 right was lost. Board staff has not met this burden and in fact, the evidence establishes a pre-1914 water right, none of which has been lost or diminished.

Board staff argues that the Coles are limited to 0.49 cubic feet per second (cfs) and relies solely on information obtained in a 1965 bulletin by the Department of Water Resources entitled “Land and Water Use in the Klamath River Hydrographic Unit” (Bulletin No. 94-6). Bulletin 94-6 identifies the total amount diverted for irrigation, domestic, stockwatering, and power production of 362 acre-feet, annually. Board staff further states that the information was confirmed by Mr. Marvin Goss, Forest Service Hydrologist, who lived on the property under prior ownership. Mr. Goss inappropriately claimed the flow capacity of the ditch to be 1.25 cfs, limited by a low point in the channel and that water had been used at a rate of 0.49 cfs for many years.

There is no sound evidence which demonstrates the Department of Water Resources' basis for the total amount of diverted water. In addition, the information documented by Mr. Goss is insufficient. His reading was based on a one-time analysis during a relatively dry season, using a leaf to measure the water flow. It is also well-known in the community that Mr. Goss had a contentious relationship with Lue and Agnes Hayes, the owners of the property at the time of Mr. Goss' reading. That fact, in conjunction with historic canal dimensions and the vast use of water at that time, dispute Mr. Goss' reading. The enclosed details the history of use which evidence prior use of at least 3.6 cfs from Stanshaw Creek (see Attachment A, “Summary of Continuous Water Use at Marble Mountain Ranch”). Furthermore, the Board has previously determined that





Matt McCarthy  
October 1, 2012  
Page 3

evidence introduced in support of a pre-1914 water right must be considered in the light most favorable to the claimant. (Board Order No. WR 95-10.)

It is also established in common law that the quantity of water to which an appropriator is entitled is determined by quantifying the maximum amount of water reasonably and beneficially used by the appropriator within the five previous calendar years. (*Smith v. Hawkins* (1898) 120 Cal. 86, 87.) The Coles have presented evidence that their use of water from Stanshaw Creek amounts to 3.6 cfs over the past five years, consistent with the amount of water diverted and put to use under previous Ranch ownership.

On these bases, the Coles have the right to divert water from Stanshaw Creek for all their irrigation and domestic consumption as well as hydroelectric power production at a minimum of 3.6 cfs. If you have any questions please contact me at 916-447-0700.

Best regards,

Barbara A. Brenner  
Counsel for Marble Mountain Ranch

BB:jhc  
Enclosure

cc: Phillip Crader  
Doug and Heidi Cole

Attachment A  
Summary of Continuous Water Use  
At Marble Mountain Ranch

In 1867, the United States of America granted a parcel located in Dillon's Township, Klamath County, California to Samuel Stanshaw who hired Chinese laborers to dig canals on the parcel of land that measured approximately 3.5 feet deep, 2 feet across the bottom, and 10 feet across the top, creating a cross section of 21 feet. (See Sean Bagheban, P.E.) In 1867, Samuel Stanshaw filed a claim for water rights amounting to 600 inches to be used for a gold mining operation and irrigation purposes on several areas of the Stanshaw property, including what is now known as the Marble Mountain Ranch. (Water Notice recorded March 25, 1867 in Book of Mining Claims 232 at Page 397.) Samuel Stanshaw hired 600 miners to mine for gold and created a community for the miners to work and live on the ranch with their families. In 1870, the mining rights were leased to Bow & Company, certain "Chinamen" to take gold ore from the Stanshaw Mining Company who also mined for gold. A requirement under the mining lease was that Bow & Company purchase their eggs from the ranch operating at the Stanshaw Mining Company. Commencing in 1867 water was diverted from Stanshaw Creek to Marble Mountain for reasonable and beneficial use.

In 1911, Samuel Stanshaw patented his mining claim which granted water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with those water rights. This patent granted him the pre-1914 appropriative water rights that continued to be diverted and put to use at Marble Mountain. Commencing in 1911 approximately 15 cubic feet per second (cfs) of water from Stanshaw Creek was diverted to Marble Mountain.

During this time, the State commenced construction of State Highway 96 and the construction crew lived on the site while the mining, ranching and domestic operations were ongoing. Each of these operations relied on Samuel Stanshaw's appropriative water rights until 1922 when the Stanshaw mine/homestead ranch was sold to Guy McMurtry, a state road engineer. Mr. McMurtry was assigned by the State to complete construction of the last unfinished section of Highway 96, between Orleans and Happy Camp. The water distribution system on Marble Mountain Ranch was utilized to support the construction work and soon, Mr. McMurtry built additional housing for these crew members and their families. The Stanshaw Creek pre-1914 water diversion was continuously relied upon and was the sole source of water for all water demands at the ranch.

The population burst prompted the State to build a school on site to service the children of all the people living on the ranch. The first school was a log building with one classroom, situated over Stanshaw Creek. In 1935 the County Superintendent of Schools in Siskiyou County determined that the one room classroom was insufficient to support the 52 children and made arrangements to construct a supporting school house adjacent to Marble Mountain Ranch. The new school house included bathrooms, a kitchen, dining room, and housing for the two teachers on site.

Meanwhile, Mr. McMurtry operated a dairy farm and provided milk and milk delivery services to the community on the ranch. There is some testimony by past residents and locals of a DC powered light system being used to illuminate/heat the main ranch house and the hen house on the ranch then owned by McMurtry. Further evidence of a DC hydroelectric power system is the remnant abandoned penstock system leading to the current powerhouse location and the knob and post electrical remnants removed from the original ranch house during renovations by the Coles in 2006. A single ditch line carrying approximately 4 cfs provide adequate sufficient water for all domestic and agricultural water uses. Although the original mining operation had ceased, the property still demanded water for the agricultural operations and domestic consumption by the residents and school. At this time the water was also used to generate power and the hydropower was and remains as the sole source of power generation.

The McMurtry's utilized the ditch for domestic consumption, as well as agricultural purposes to raise hay, fetch, vegetable garden, and the dairy farm until 1958 when it was sold to Lue and Agnes Hayes. The Hayes operated a cattle ranch with one hundred cattle from 1958 to 1994. The ranch sustained 16 homes and outbuildings and housed State road workers, United States Forest Service employees and transient recreational fisherman. The ditch lines and foundational domestic/agricultural water lines that are in place today were the same lines that existed when the Hayes' purchased the property. The lines carried approximately 4 cfs and supported all the people living on the ranch at that time, the cattle ranch operation and continued agricultural production.

The Hayes' continued to use the water for domestic consumption to support the many residents on the property. In addition, they irrigated hay and alfalfa pastures by turning out water from the ditch in various places and flooding the pastures. Some of the diverted water was returned to Stanshaw Creek. The dimensions of the ditch remained the same from the time the Hayes' purchased the property to the time the Ranch was sold to the Cole's. The Hayes also operated a pelton wheel generator for electricity, still in use today. The wheel generator was a 4 inch line, then increased to a 14 inch line utilized to create electricity for the occupants on the Ranch.

After diverted water was funneled into the domestic water line and hydropower penstock, remaining flows and power plant effluent continued through the lower elevation canals and were diverted at appropriate spots to flood irrigate alfalfa hay pastures, vegetable gardens, fruit trees, and lawns. Per Lue Hayes, there were times in his ownership that virtually every available bit of Stanshaw Creek water was diverted into the canals and used in power generation and irrigation of crops at the ranch. During the Hayes family occupation, the power plant was upgraded to a facility that produced about 40 KW of AC power that was needed for an increasing ranch residency population.

During these years, the Hayes' family maintained the ditch to ensure that any gravel and silt that settled in the ditch was excavated and the flume was kept in good condition particularly because the wood would deteriorate and branches would clog the flume. The Hayes family removed redwood plank ditch linings that had rotted in various places in the canal system and maintained and replaced a wooden flume section at various times during their occupation of the

ranch. The agricultural uses of the ranch continued through the Hayes family era with flood irrigation as the primary agricultural water distribution system.

The Hayes' measurement of the ditch at that time ranged from 2 -1/2 feet to 5 feet wide and from 2-1/2 feet to 1-1/2 feet deep, depending on the water flow. The abandoned ditch, which has now been inactive for approximately 140 years, is the same size as the original ditch in use today. The ranch was then sold to the Young family in 1972 when the Young's licensed the ranch as a state licensed mobile home/RV park with a permitted capacity of 57 mobile home hook-ups. The continuing rental of the 10 previously constructed cabins and three homes also added to the ranch population. Much of the water use was directed at domestic consumption and power generation to support ranch residents. However, the ranch still sustained alfalfa pastures, fruit and nut orchards, and large vegetable gardens.

The Young's Ranch Resort had a resident population between 100 – 200 persons consuming ranch water and hydroelectric power. Past Young's ranch visitors returning to Marble Mountain ranch recant stories of Young's ranch management needing to patrol the ranch routinely to chastise those ranch residents using more than their allotted share of power and water during low Stanshaw Creek stream flow periods during the summer months. Again, during this period, the original Stanshaw Creek canal system carried water at full capacity during periods of available flow, and carried nearly all of Stanshaw Creek flows during periods of diminished low Summer flows.

When the Cole family purchased the ranch in 1994, the infrastructure load requirements for power production and consumption were beyond the capacity of the ranch in the Cole's estimation. A change in business model was implemented at this time to reduce the ranch residency to a smaller population by targeting short term residents on a full service recreational visit. The target guest population now at Marble Mountain Ranch is 30 – 35 visitors on a full service short term guest ranch visit. Guided rafting, fly fishing, trail rides and other recreational activities along with food/meal service provide higher income returns per resident with fewer residents on location to deplete power and water resources. Additional water distribution improvements have been implemented by switching the agricultural uses from flood irrigation to sprinkler irrigated pastures, drip irrigated gardens and by installing culverts in the canal systems to reduce seepage of captured water. Additionally, the hydroelectric power plant was upgraded in 1997 to allow for more efficient power production with available Stanshaw Creek stream flows. Ongoing efforts to improve efficiency of Stanshaw Creek water and reduce demand include grant applications for canal system piping/culverting, and power plant upgrades.

Marble Mountain Ranch, since the Cole's ownership, has beneficially used approximately 4 cfs maintained by the Marble Mountain Ranch predecessors and current occupants. There has been no 5 year continuous lapse of water transport, or truncated use (despite seasonal variations in flow), that might suggest a diminished capacity. In fact, the historical growth and development of the ranch operations over 150 years speaks to the undeniable maintenance of the canal systems and beneficial use of all water diverted from Stanshaw Creek.

**Matthew McCarthy - Re: MMcCarthy: A029449; Application 29449 of Douglas Cole, et al.**

---

FILE  
A029449

**From:** Matthew McCarthy  
**To:** Brenner, Barbara A.  
**Date:** 6/1/2012 10:00 AM  
**Subject:** Re: MMcCarthy: A029449; Application 29449 of Douglas Cole, et al.  
**CC:** Cole, Douglas; Crader, Phillip; O'Hagan, John; Vorpapel, Jane; marga...  
**Attachments:** Letter to SWRCB re extension of Cole App\_2.pdf

---

Ms. Brenner,

Thank you for your letter. You may consider this email to be approval of the requested four month extension.

If no response is received by October 1, 2012, the Division may pursue cancellation of Application 29449 for the reasons specified in the letter from Phil Crader dated March 30, 2012.

Please let me know if you have any questions.

Sincerely,  
Matt McCarthy  
Division of Water Rights  
916-341-5310

>>> "Brenner, Barbara A." <babrenner@stoel.com> 5/30/2012 5:02 PM >>>

Mr. McCarthy,  
Please see my attached letter.

**Barbara A. Brenner** | Attorney  
**STOEL RIVES LLP** | 500 Capitol Mall, Suite 1600 | Sacramento, CA 95814  
Direct: (916) 319-4676 | Office: (916) 447-0700 | Fax: (916) 447-4781  
[babrenner@stoel.com](mailto:babrenner@stoel.com) | [www.stoel.com](http://www.stoel.com)

New! [California Environmental Law Blog](#)

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STATE WATER RESOURCES  
CONTROL BOARD

2012 JUN -1 AM 9:59

DIV OF WATER RIGHTS  
SACRAMENTO

*DGC*  
*FILE*  
**A029449**  
500 Capitol Mall, Suite 1600  
Sacramento, California 95814  
main 916.447.0700  
fax 916.447.4781  
www.stoel.com

BARBARA A. BRENNER  
Direct (916) 319-4676  
babrenner@stoel.com

May 29, 2012

**VIA EMAIL AND REGULAR MAIL**

State Water Resources Control Board  
Division of Water Rights  
Attn: Matt McCarthy  
P.O. Box 2000  
Sacramento, CA 95812-2000

**Re: MMcCarthy: A029449; Application 29449 of Douglas Cole, et al.; Stanshaw Creek  
Tributary to Klamath River in Siskiyou County**

Dear Mr. McCarthy:

Please consider this formal request for an extension of four (4) months for further pursuit of Mr. Doug Cole's Statement of Water Diversion and Use Application A029449.

I have been retained by Mr. Cole to assist in securing his right to divert water from Stanshaw Creek. In my efforts to assist Mr. Cole, it has become apparent that he holds a valid pre-1914 water right on which he can likely rely instead of pursuing this Application which was filed by his predecessor in interest.

Mr. Cole has been diligently working with the California Department of Fish and Game and National Marine Fisheries Service staff to develop means to return the water he diverts for hydropower back to Stanshaw Creek, thereby avoiding fishery impacts. A grant application has also been submitted to provide funding that will assist in determining the feasibility of Mr. Cole's proposal to return water back to Stanshaw Creek. Mr. Cole is committed to addressing the concerns raised by the fishery agencies and resolving such concerns in a mutually beneficial arrangement.

In an effort to establish Mr. Cole's pre-1914 appropriative rights, he has contacted previous owners of the property to prove continuous water diversion and use on the property over the past

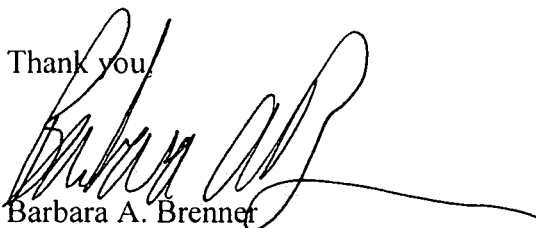


State Water Resources Control Board  
May 29, 2012  
Page 2

100 years. He has collected historical aerial photographs of the ranch evidencing continued use and obtained records from the U.S. Forest Service relevant to his water diversion. However, access to landowners who have passed away and documents which are difficult to locate have complicated Mr. Cole's efforts. Therefore, we request that you grant a four (4) month extension to either pursue his Application or withdraw the Application and rely on his pre-1914 water right.

Please feel free to contact me with any questions.

Thank you,



Barbara A. Brenner

BB:jhc

cc: Douglas Cole  
Phillip Crader



STATE WATER RESOURCES  
CONTROL BOARD

2012 JUN -1 AM 10:17

DIV OF WATER RIGHTS  
SACRAMENTO

MJM/PGC  
WR-5  
A029449

500 Capitol Mall, Suite 1600  
Sacramento, California 95814  
main 916.447.0700  
fax 916.447.4781  
www.stoel.com

BARBARA A. BRENNER  
Direct (916) 319-4676  
babrenner@stoel.com

May 29, 2012

**VIA EMAIL AND REGULAR MAIL**

State Water Resources Control Board  
Division of Water Rights  
Attn: Matt McCarthy  
P.O. Box 2000  
Sacramento, CA 95812-2000

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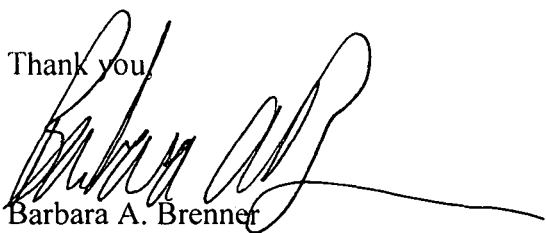


State Water Resources Control Board  
May 29, 2012  
Page 2

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Please feel free to contact me with any questions.

Thank you,



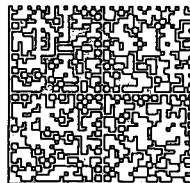
Barbara A. Brenner

BB:jhc

cc: Douglas Cole  
Phillip Crader



500 Capitol Mall, Suite 1600  
Sacramento, California 95814



HASLER	WR-5 017H15557060	US POSTAGE
	<u>\$0.450</u>	
	05/30/2012	
	Mailed From 95814	

State Water Resources Control Board  
Division of Water Rights  
Attn: Matt McCarthy  
P.O. Box 2000  
Sacramento, CA 95812-2000

95812200000

000502



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR ENVIRONMENTAL PROTECTION

State Water Resources Control Board

MAR 30 2012

In Reply Refer  
To: MCarthy: A029449

Mr. Douglas Cole  
Marble Mountain Ranch  
92520 Highway 96  
Somes Bar, CA 95568

Dear Mr. Cole:

APPLICATION 29449 OF DOUGLAS COLE, ET AL., STANSHAW CREEK TRIBUTARY TO  
KLAMATH RIVER IN SISKIYOU COUNTY

Division of Water Rights (Division) staff has reviewed Application 29449 to determine the next step in application processing.

Stanshaw Creek is a tributary to the Klamath River and serves as thermal refuge for coho salmon (*Oncorhynchus kisutch*), which is currently listed as threatened on both state and federal endangered species lists. According to staff from the National Marine Fisheries Service (NMFS) and the Department of Fish and Game (DFG), Stanshaw Creek is an important refuge for juvenile coho salmon and steelhead trout (*O. mykiss*) which may need to escape the warmer temperatures and low dissolved oxygen levels occasionally found in the Klamath River during the warm summer and early fall months. Both fish have been documented in Stanshaw Creek.

NMFS and DFG have both requested that any permit issued pursuant to your application include a minimum bypass flow to protect salmonids in Stanshaw Creek. You have agreed to alter your diversion system to return flows back to Stanshaw Creek, but only if grant funds are available to cover the costs of such construction. To date, you have not agreed to maintain a bypass flow in Stanshaw Creek nor have you secured grant funds.

Since you have indicated that you will not fund the measures identified as necessary to protect public trust resources, it appears that the Division lacks the information needed to support a finding that the requirements of Water Code section 1275, subdivision (b) have been met. Water Code section 1275, subdivision (b) states that the State Water Board may request the following information:

*Information needed to comply, or demonstrate compliance with, any applicable requirements of the Fish and Game Code or the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.)*

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

SURNAME	MCCARTHY 3/26/12 <i>Cole</i> 3/30/12		000503
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MAR 30 2012

Pursuant to Water Code section 1276, the Division may cancel Application 29449 unless, within the next 60 days, the Applicant provides a plan to supply the information necessary to document compliance with Water Code section 1275, subdivision (b).

Matt McCarthy is the staff person presently assigned to this matter, and he may be contacted at (916) 341-5310 or [mmccarthy@waterboards.ca.gov](mailto:mmccarthy@waterboards.ca.gov). Written correspondences or inquiries should be addressed as follows: State Water Resources Control Board, Division of Water Rights, Attn: Matt McCarthy, PO Box 2000, Sacramento, CA, 95812-2000.

Sincerely,

ORIGINAL SIGNED BY  
Phillip Crader, Manager  
Permitting and Licensing Section  
Division of Water Rights

ec: State Water Resources Control Board  
John O'Hagan  
[johagan@waterboards.ca.gov](mailto:johagan@waterboards.ca.gov)

Department of Fish and Game  
Jane Vorpapel  
[jvorpapel@dfg.ca.gov](mailto:jvorpapel@dfg.ca.gov)

National Marine Fisheries Service  
Margaret Tauzer  
[margaret.tauzer@noaa.gov](mailto:margaret.tauzer@noaa.gov)

MMcCarthy, DClark, 03/26/12  
U:\PALDR\PERDRV\MMcCarthy\A029449 (Cole)\29449cancelwarn.docx

**From:** Jane Vorpägel <JVorpage@dfg.ca.gov>  
**To:** cmrowka@waterboards.ca.gov  
**CC:** MMcCarthy@waterboards.ca.gov; JLing@waterboards.ca.gov; WSinnen@dfg.ca.g...  
**Date:** 1/20/2012 11:31 AM  
**Subject:** Revocation Cole permit A29449 and SD 30945R

Hi Cathy,

Just checking on if you have heard from Doug Cole. I was reviewing my notes from last year and on May 13, 2011 you called me and said he was not cooperating but you would give him one more chance to comply with DFG codes and ESA. You said if he could not show compliance you would revoke his permit as we cannot dismiss our protest.

You may recall he does have a small pre 1914 right but not for the power generation aspect, nor the small domestic storage.

He is also taking much more than his pre 14 right. (about 4.5 CFS from Stanshaw Creek, a stream with coho refugia at the mouth). He diverts it down a leaking ditch, through his power house, to a storage pond (which was how we noticed his project back in 1997) which then discharges to Irvine Creek.

He applied for a small domestic in 1998 A30945R but as stated in our letter to the Board on 10-15-2009, DFG has never issued a clearance letter with terms and conditions to protect the beneficial uses in Stanshaw Creek.

Stanshaw Creek is tributary to the Klamath River and a known refugia for coho salmon.

He applied for 3 CFS for his hydro power water A29449. This was protested by several people and agencies. His application says 1989, but the date on the notice is Jan 28, 2000. DFG's protest was accepted by the Board on April 4, 2000.

You may also recall this diversion was the subject of a complaint field investigation on July 26, 2000 and again on October 17, 2001. I do not believe the complaints were ever resolved.

Any help on this would be greatly appreciated. I have been working on this diversion for over 12 years now. I am hoping this will be taken care of before we all retire. (2020)

Thanks Cathy,

Hope to hear from you soon.

Jane Vorpägel  
Staff Environmental Scientist  
Department of Fish and Game  
(530) 225-2124  
(530) 604-4065 Cell  
(530) 225-2381 Fax

**MARBLE MOUNTAIN RANCH**

92520 Hwy. 96, Somes Bar, California 95568

530-469-3322/800-KLAMATH

guestanch@marblemountainranch.com/www.marblemountainranch.com

Ms. Katherine Mrowka, Chief  
 Inland Stream Unit  
 Division of Water Rights  
 P.O. Box 2000  
 Sacramento, CA 95812-2000

2010 MAY 28 AM 9:41  
 DIVISION OF WATER RIGHTS  
 SACRAMENTO

Dear Ms. Katherine Mrowka, Chief

5/24/20100

Please be advised that we have submitted our statement of diversion, and our request for renewal of small domestic use. They are arriving at your offices under separate cover. We intend to continue the diversion under Application 29449 while seeking routes to mitigate concerns of other parties, including California Fish and Game in particular.

A first order of business is to notify your office that there seems to be an errant address for Marble Mountain Ranch in your files. In a phone conversation with your office about a missing form and fee, It became apparent that there is an address showing a Sacramento location. Please be advised that all billings and notifications should be sent to the Somes Bar Address listed above. We have also received your communication regarding our renewal of domestic use registration in March of this year, for an expiration that happened in Sept of 2009. I will give my best efforts at timely responses as communications arrive from your office.

We have over the past registration period attempted to mitigate concerns from the State of California Department of Fish and Game. Our first effort was a grant proposal to re-route hydroplant water to the anadromous stretch of Stanshaw creek. This was a project that would have cost \$46,000 and would have nearly fully re-watered the anadromous Stanshaw creek section. It was fully supported by the Kurok tribe and written with help from the Mid Klamath Watershed council. Unfortunately, this project was not deemed important enough to fund, the denial speaks to a lack of willingness by protestors to find mutually satisfactory solutions. Our diversion continues for the moment status-quo.

In the interim, I have worked with Toz Soto, of the Karuk tribe natural resources department to monitor the mouth of Stanshaw creek. During this past Summer,

**Marble Mountain Ranch voluntarily diverted water back to Stanshaw to maintain juvenile salmonids in the sensitive areas. This diversion lasted approximately two months during this low water year, and cost us significant capital as we replaced lost hydropower with fossil fuel generated power. While this coming year does not appear to be threatened with low flows in Stanshaw Creek, I will continue to work with Mr. Soto as an effort to show good faith toward the public trust.**

**In the meantime, we maintain our position as holder of a pre-1914 appropriative diversion, with a capacity of up to 3 cfs as flows in Stanshaw Creek allow. On this point, the California Department of Fish and Game has posted as one of their conditions for protest dismissal that a continuous bypass of 2.5 cfs be maintained. These bypass flows are completely unrealistic on several levels.**

- 1. Stanshaw Creek Flows often dip below 2.5 cfs naturally, without any Marble Mountain Ranch or other riparian diversion accounted for. Margaret Tauzer of NMFS has estimated low October flows periodically to dip as low as 1.02 cfs. In spite of our best desires, we cannot create the missing 1.5 cfs from natural flows that are absent beyond our control.**
- 2. Flows for the anadromous stretch of Stanshaw Creek are impacted by several additional riparian diverters that fall subservient to our primary historical appropriative diversion. These include the Mountain Home Ranch, the Konrad Fisher property, as well as the USFS in their stock diversions at the Stanshaw meadows. If there is a truncation of water that is prescribed in order to maintain a minimum flow, it would be argued by us that a first source location to truncate would be the diverters that were established as late as 50 years after the Stanshaw claim to water in 1867.**
- 3. In my experience this past Summer with voluntary turn-back of Stanshaw water, it was apparent that there was far less than 2.5 cfs required to maintain health of salmonids in the mouth of Stanshaw. I estimate the 2009 total flow incoming at our point of diversion was at or less than 2 cfs in the low water months, and yet we were able to coordinate with tribal department of natural resources to keep the Stanshaw refugia healthy as well as maintain domestic and agricultural needs at Marble Mountain Ranch.**

**In order to maintain some level of transparency in our intentions and hopes, I am sharing the following current thoughts. First, I do not see Marble Mountain Ranch demands for Stanshaw water and anadromous Stanshaw refugia health as mutually exclusive. Theoretical solutions for sustenance of natural resources and our family enterprise include improving efficiency of water transport, improving power generating capacity by relocating the power plant, and return of hydroplant effluent to the mouth of Stanshaw.**

**Since our first attempt to mitigate conflicts by returning effluent was denied funding, I am hoping to start some momentum based on a solution of relocating our power plant to a location lower in elevation. We can gain power production capacity and reduce need for Stanshaw water by catching Stanshaw water farther upstream, or by generating power farther down hill to create more head and**

**horsepower. This solution could preserve Marble Mountain Ranch viability while reducing the quantity needs for Stanshaw water diversion. The denial of funding for a comparatively small amount of grant moneyt capital (\$46,000) that would have completely mitigated concerns of all protestants is difficult for me to understand, but I intend to proceed with efforts to find other solutions.**

**Sincerely,  
Douglas Cole  
Marble Mountain Ranch  
92520 Hwy 96  
Somes Bar, CA 95568**



29449<sup>WR-5</sup>  
6-3-98

TRANSIT SURVEY DATA FORM  
Cole's Reservoir

100 = Datum

= Gun Elevation

Shot #	Shot I.D.	Top Stadia	Bottom Stadia	Verticle deg.	Angle min.	Horizontal deg.	Angle min.	depth below rod
1	water line - west side	4.55	4.31	-12	20	60°	25	
2	" " " "	3.02	2.63	-10°	∅	70	30	
3		2.68	2.10	-6	55	82	40	
4	North end w.L.	3.90	2.06	-5°	∅	73	10	
5	"	4.05	3'	-3°	10'	65	10	
6	east side	4.04	3'	-3°	15'	59°	35'	
7	↓	3.98	3'	-3°	30'	45	25'	
8		4.90	4'	-3°	10'	22	35	
9		4.99	4'	-2°	50'	5	20	
10		4.10	3'	-3°	10'	1	10	
11		4.15	3'	-3°	∅	-8	40	
12	inlet @ SE cor	2.54	1.0	-2	55	-18	55	
13	south side	3.35'	2.0	-2	45	-25	55	
14	" "	4.14	3.0	-3	∅	-42	10	
15		5.05	4'	-2	40	-47	45	

29449  
6776C



**TRANSIT SURVEY DATA FORM**  
**Cole's Reservoir**

0° ≈ due east  
 90° ≈ due north  
 -45° ≈ SE - (south end of res.)  
 = Gun Elevation

100 = Datum

Shot #	Shot I.D.	Top Stadia	Bottom Stadia	Verticle deg.	Angle min.	Horizontal deg.	Angle min.	depth below rod
31	SW corner - w.l.	5.93	5.0'	-2	30	-53	25'	
32	west side - w.l.	4.6	4.0	-5	∅	-59	05	
33	west side - w.l.	5.15'	5.0	-8	05	-19	55	
34	west TOP	3.29	3.15	-17	50	-2	15	
35	NW TOP	3.59	3'	-2	30	+81	25	
36	NE TOP	6.25	5'	-0	40	+64	∅	
37	erst "	6.02	5'	-0	40	15	30	
38	" "	2.26'	1'	-1	40	-6	45	
39	Spillway	4.59	3'	-1	15	-17	50	
40	South TOP	3.45	2'	-1	05	-28	30	
41	SW TOP	4.9	4'	-1	15	-57	15	
42	Toe	1.48'	1	-31	40	10	30	
43								
44								
45								

# STREAMFLOW MEASUREMENT NOTES

Stream: \_\_\_\_\_ DATE: 4 / 28 / \_\_\_\_\_

Location: \_\_\_\_\_ TIME: \_\_\_\_\_ hrs

ENGR: \_\_\_\_\_ METER: \_\_\_\_\_ GAGE HEIGHT: \_\_\_\_\_

TOTAL DISCHARGE: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

	X	Width	Total Depth	% Depth (0.8, 0.6, or 0.2)	Rev.	Time (sec.)	Avg. Velocity	Area	Incremental Discharge	Sum of Discharges
1	1.0'	edge	0							
2	1.6	0.6	1.05		60	45	1.33			
3	2.2	0.6	1.13		60	42	1.43			
4	2.8	0.6	1.0		60	42	1.43			
5	3.4	edge	0							
6										
7										
8										
9										
10										
11										
12										
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23										
24										
25										

Stream above POD

9' wide

0.5 - 0.75' avg. depth - visually estimated

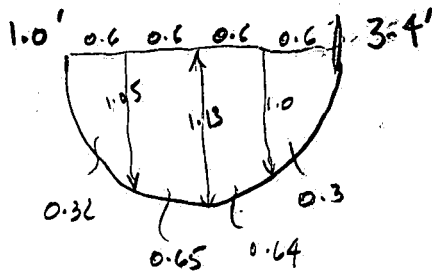
surface velocity  $\approx 10' / 2 \text{ sec} = 5.0 \text{ fps}$

Avg. velocity  $\approx \text{Sur. vel.} \times 0.67 = 3.35 \text{ fps}$

$$9 \times \frac{0.5 + 0.75}{2} \times 3.35 \approx 18.8 \text{ cfs}$$

Say 15 - 25 cfs but about 19 cfs

Flume Section in Canal



$$\text{Area} \approx 1.91$$

$$\text{Avg. Vel} \approx 1.40$$

$$Q = A \times V = 2.7 \text{ cfs}$$

$$A = \pi r^2$$

$$r = \frac{3.4}{2} = 1.2$$

$$\text{Area} \approx 4.5 \text{ ft}^2$$

TRANSIT SURVEY DATA FORM  
Cole's Reservoir

WR-5

100 = Datum

100 = Gun Elevation

Shot #	Shot I.D.	Top Stadia	Bottom Stadia	Verticle deg.	Angle min.	Horizontal deg.	Angle min.	depth below rod	Vert. Angle (radians)	Horiz. Angle (radians)	Line of Sight Distance	Horizontal Distance	"X"	"Y"	"Z"
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TRANSIT SURVEY DATA FORM  
Cole's Reservoir

100 = Datum

100 = Gun Elevation

Shot #	Shot I.D.	Top Stadia	Bottom Stadia	Verticle deg.	Angle min.	Horizontal deg.	Angle min.	depth below rod	Vert. Angle (radians)	Horiz. Angle (radians)	Line of Sight Distance	Horizontal Distance	"X"	"Y"	"Z"
1	water line west side	4.55	4.31	-12	20	60	25		-0.20	1.05	24	24	12	20	90.8
2		3.02	2.63	-10	0	70	30		-0.17	1.23	39	38	13	36	90.5
3		2.68	2.10	-6	55	82	40		-0.09	1.44	58	58	7	57	92.5
4		3.90	2.06	-5	0	73	10		-0.09	1.28	184	183	53	175	81.0
5		4.05	3.00	-3	10	65	10		-0.05	1.14	105	105	44	95	91.3
6		4.04	3.00	-3	15	59	35		-0.05	1.04	104	104	53	90	91.5
7		3.98	3.00	-3	30	45	25		-0.04	0.79	98	98	69	70	92.2
8		4.90	4.00	-3	10	22	35		-0.05	0.39	90	90	83	35	91.1
9		4.99	4.00	-2	50	5	20		-0.02	0.09	99	99	99	9	93.5
10		4.10	3.00	-3	10	1	10		-0.05	0.02	110	110	110	2	91.0
11	water line SE side	4.15	3.00	-3	0	-8	40		-0.05	-0.13	115	115	114	-15	90.4
12		2.54	1.00	-2	55	-18	55		-0.02	-0.30	154	154	147	-45	95.3
13		3.35	2.00	-2	45	-25	55		-0.02	-0.42	135	135	123	-55	94.4
14		4.14	3.00	-3	0	-42	10		-0.05	-0.73	114	114	85	-76	90.5
15		5.05	4.00	-2	40	-47	45		-0.02	-0.81	105	105	73	-76	93.0
16		5.93	5.00	-2	30	-53	25		-0.03	-0.92	93	93	56	-74	92.1
17		4.60	4.00	-5	0	-59	5		-0.09	-1.03	60	60	31	-51	90.5
18	WL	5.15	5.00	-8	5	-19	55		-0.14	-0.32	15	15	14	-5	92.9
19	HWL	3.24	3.15	-17	50	-2	15		-0.28	-0.03	9	9	9	-0	94.4
20		3.59	3.00	-2	30	81	25		-0.03	1.42	59	59	9	58	95.2
21		6.25	5.00	0	40	64	0		0.01	1.12	125	125	55	112	95.8
22		6.02	5.00	0	40	15	30		0.01	0.27	102	102	98	27	95.7
23		2.26	1.00	-1	40	-6	45		-0.01	-0.09	126	126	125	-12	97.6
24		4.59	3.00	-1	15	-17	50		-0.01	-0.28	159	159	153	-44	94.1
25		3.45	2.00	-1	5	-28	30		-0.02	-0.48	145	145	129	-67	95.0
26		4.90	4.00	-1	15	-57	15		-0.01	-0.99	90	90	49	-75	94.4
27		1.48	1.00	-31	40	10	30		-0.53	0.18	48	41	41	8	77.8
28															

TRANSIT SURVEY DATA FORM  
Cole's Reservoir

WR-5

100 = Datum

100 = Gun Elevation

Shot #	Shot I.D.	Top Stadia	Bottom Stadia	Verticle deg.	Angle min.	Horizontal deg.	Angle min.	depth below rod	Vert. Angle (radians)	Horiz. Angle (radians)	Line of Sight Distance	Horizontal Distance	"X"	"Y"	"Z"
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TRANSIT SURVEY DATA FORM  
Cole's Reservoir

100 = Datum

100 = Gun Elevation

Shot #	Shot I.D.	Top Stadia	Bottom Stadia	Verticle deg.	Angle min.	Horizontal deg.	Angle min.	depth below rod	Vert. Angle (radians)	Horiz. Angle (radians)	Line of Sight Distance	Horizontal Distance	"X"	"Y"	"Z"
1	water line west side	4.55	4.31	-12	20	60	25		-0.20	1.05	24	24	11.6	20.4	90.8
2		3.02	2.63	-10	0	70	30		-0.17	1.23	39	38	12.8	36.2	90.5
3		2.68	2.10	-6	55	82	40		-0.09	1.44	58	58	7.4	57.3	92.5
4		3.90	3.06	-5	0	73	10		-0.09	1.28	84	84	24.2	80.1	89.2
5		4.05	3.00	-3	10	65	10		-0.05	1.14	105	105	44.0	95.2	91.3
6		4.04	3.00	-3	15	59	35		-0.05	1.04	104	104	52.6	89.6	91.5
7		3.98	3.00	-3	30	45	25		-0.04	0.79	98	98	68.7	69.7	92.2
8		4.90	4.00	-3	10	22	35		-0.05	0.39	90	90	83.0	34.5	91.1
9		4.99	4.00	-2	50	5	20		-0.02	0.09	99	99	98.6	9.2	93.5
10		4.10	3.00	-3	10	1	10		-0.05	0.02	110	110	109.8	2.2	91.0
11	water line SE side	4.15	3.00	-3	0	-8	40		-0.05	-0.13	115	115	113.9	-14.7	90.4
12		2.54	1.00	-2	55	-18	55		-0.02	-0.30	154	154	147.2	-45.2	95.3
13		3.35	2.00	-2	45	-25	55		-0.02	-0.42	135	135	123.2	-55.1	94.4
14		4.14	3.00	-3	0	-42	10		-0.05	-0.73	114	114	84.8	-75.9	90.5
15		5.05	4.00	-2	40	-47	45		-0.02	-0.81	105	105	72.6	-75.8	93.0
16		5.93	5.00	-2	30	-53	25		-0.03	-0.92	93	93	56.5	-73.8	92.1
17		4.60	4.00	-5	0	-59	5		-0.09	-1.03	60	60	30.9	-51.2	90.5
18	WL	5.15	5.00	-8	5	-19	55		-0.14	-0.32	15	15	14.1	-4.6	92.9
19	HWL	3.24	3.15	-17	50	-2	15		-0.28	-0.03	9	9	8.6	-0.3	94.4
20		3.59	3.00	-2	30	81	25		-0.03	1.42	59	59	8.8	58.3	95.2
21		6.25	5.00	0	40	64	0		0.01	1.12	125	125	54.8	112.3	95.8
22		6.02	5.00	0	40	15	30		0.01	0.27	102	102	98.3	27.3	95.7
23		2.26	1.00	-1	40	-6	45		-0.01	-0.09	126	126	125.5	-11.5	97.6
24		4.59	3.00	-1	15	-17	50		-0.01	-0.28	159	159	152.7	-44.3	94.1
25		3.45	2.00	-1	5	-28	30		-0.02	-0.48	145	145	128.6	-66.9	95.0
26		4.90	4.00	-1	15	-57	15		-0.01	-0.99	90	90	49.3	-75.3	94.4
27		1.48	1.00	-31	40	10	30		-0.53	0.18	48	41	40.7	7.5	77.8
28															

KDM  
A29449



## Memorandum


2009 OCT 19 AM 11:42

DIV. OF WATER RIGHTS  
SACRAMENTO

~~D030945~~

Date: October 15, 2009

To: Ms. Katherine Mrowka, Chief  
Inland Streams Unit  
Division of Water Rights  
P.O. Box 2000  
Sacramento, CA 95812-2000

For:   
From: **GARY B. STACEY**, Regional Manager  
Northern Region  
Department of Fish and Game  
601 Locust Street  
Redding, CA 96001

Subject: **Small Domestic Use Registration No. D030945, Certificate No. R480, Douglas Cole, Stanshaw Creek, Siskiyou County**

The Department of Fish and Game (Department) has received your September 3, 2009, letter which asks for a written confirmation within 45 days regarding requirements which the Department would need for the subject registration. As indicated in your letter, the Department has never issued a clearance letter with terms and conditions for this Small Domestic Use Registration (SDU). Pursuant to Section (§)1228.3 of the State Water Code, registration of a small domestic use appropriation requires consultation with the Department.

The Water Rights Division (Division) sent Mr. Cole a letter on November 30, 1999 and again on April 8, 2005, requesting he contact the Department to obtain a written clearance letter. The Division never received a letter from the Department regarding clearance for this SDU registration and consequently, Certificate R480 has not been renewed.

Based on this information, it appears that Mr. Cole has not complied with the requirements for maintaining a SDU registration. Board literature on small domestics state "In order to maintain a registration, the registrant must renew the registration every five years by completing and submitting a renewal form and renewal fee." As stated above the State Water Code requires consultation with the Department **prior** to issuance of a SDU.

The Department does have conditions which must be met to avoid impacts to beneficial uses due to this diversion.



Ms. Katherine Mrowka, Chief  
October 15, 2009  
Page Two

This diversion was the subject of a complaint investigation with an inspection held on October 17, 2001. This diversion is also the subject of a protest on Water Right Application 29449 by the Department on March 17, 2000. We understand the Division regards these as separate issues, however, the point of diversion and impacts to resources are the same.

As the Department stated in our November 20, 2001 letter to the Board, as well as in a letter to Mr. Cole, our primary concerns are for coho salmon (*Onchorhynchus kisutch*) which rear in the lower reach of Stanshaw Creek below Highway 96. Coho salmon are State- and federally-listed as "threatened." Coho salmon have undergone at least a 70% decline in abundance since the 1960s, and are currently at 6 to 15% of their abundance during the 1940s (Department, 2004). The presence of coho salmon in Stanshaw Creek was established by the Department during a field investigation. The North Coast Regional Water Quality Control Board's Draft Total Maximum Daily Load for the Klamath River identifies Stanshaw Creek as an important refugia for coho salmon.

The Department believes the Highway 96 culverts are currently a barrier to upstream migration of fish. The Department, therefore, has focused our concerns and mitigation measures on the 0.25 mile stream reach downstream of these culverts. This stream reach is characterized by deep pools, large woody debris, dense overhanging riparian cover shading the stream, and generally cool water temperatures thus providing good rearing and refuge habitat for juvenile coho salmon and steelhead trout (*O. mykiss*).

Coldwater habitats such as those provided by Stanshaw Creek are important refuge for juvenile coho salmon which may need to escape the warmer temperatures, and low dissolved oxygen levels occasionally found in the Klamath River during the warm summer and early fall months. However, critical coldwater refuge habitats for coho salmon and steelhead trout in lower Stanshaw Creek need to be accessible to the fish, therefore, sufficient water needs to remain in the stream to maintain connectivity to the Klamath River year round. Mr. Cole's diversion takes water from Stanshaw Creek and discharges it into another watershed, Irvine Creek.

The Department believes the Division should revoke Mr. Cole's SDU. He has not complied with regulations to obtain the water right in a lawful manner.

If the Division still requests our conditions at this juncture, the following would be our preliminary recommendations:

1. The Department currently proposes year-round bypass flows of 2.5 cubic feet-per-second (cfs) to be measured at the culverts below Highway 96 to mitigate potential impacts from the diversion on Stanshaw Creek. Our objective for these flows is to

Ms. Katherine Mrowka, Chief  
October 15, 2009  
Page Three

ensure existing instream habitat conditions in Stanshaw Creek for coho salmon and steelhead are maintained. To accomplish this objective, the Department recommends the total stream flow be bypassed whenever it is less than the designated amount.

Based on field reviews and best professional judgment, it was determined that 2.5 cfs should maintain connectivity and an adequate channel which allows young salmonids access to Stanshaw Creek from the Klamath River. However, the Department may require additional bypass flows in the future if conditions change such that 2.5 cfs is no longer adequate to allow salmonid passage at the mouth of Stanshaw Creek. Future modification of the barriers or more detailed studies may also indicate a need for higher instream flows.

2. Pursuant to Fish and Game Code (Code) §1600 *et seq.*, prior to any substantial diversion from a stream the applicant must notify the Department and obtain a lake or streambed alteration agreement (LSAA). Mr. Cole last applied for a LSAA in 1999. Due to the listing of coho salmon significant change in conditions has occurred and his LSAA should be updated.
3. The California Endangered Species Act (CESA) (Code Sections 2090 to 2097) is administered by the Department and prohibits the take of plant and animal species designated by the Fish and Game Commission as either threatened or endangered in the State of California. If the project could result in the "take" of a State listed threatened or endangered species, the Responsible Party has the responsibility to obtain from the Department, a California Endangered Species Act Incidental Take Permit (CESA 2081 Permit). The Department may formulate a management plan that will avoid or mitigate take. If appropriate, contact the Department CESA coordinator at (530) 225-2300.
4. All water diversion facilities shall be designed, constructed, and maintained so they do not prevent, or impede, or tend to prevent or impede the passing of fish upstream or downstream, as required by Fish and Game Code Section 5901. This includes, but is not limited to, maintaining or providing a supply of water at an appropriate depth, and velocity to permit volitional upstream and downstream migration of juvenile and adult salmonids.
5. Notwithstanding any right the Responsible Party has to divert and use water, the Responsible Party shall allow sufficient water to pass over, around, or through any dam the party owns or operates to keep in good condition any fish that may exist below the dam, as required by Fish and Game Code Section 5937.

The issuance of this letter by the Department does not constitute a valid water right or an LSAA.

Ms. Katherine Mrowka, Chief  
October 15, 2009  
Page Four

If you have questions or comments regarding this memorandum, please contact Staff Environmental Scientist Jane Vorpapel at (530) 225-2124.

cc: Ms. Jane Vorpapel  
Northern Region  
Department of Fish and Game  
601 Locust Street  
Redding, CA 96001

ec: Mss. Jane Vorpapel, Donna Cobb, and Jane Arnold  
Mr. Jim Whelan, Warden Greg Horne  
Department of Fish and Game, Northern Region  
[Jvorpapel@dfg.ca.gov](mailto:Jvorpapel@dfg.ca.gov), [Dcobb@dfg.ca.gov](mailto:Dcobb@dfg.ca.gov), [Jwhelan@dfg.ca.gov](mailto:Jwhelan@dfg.ca.gov),  
[Ghorne@dfg.ca.gov](mailto:Ghorne@dfg.ca.gov), [JArnold@dfg.ca.gov](mailto:JArnold@dfg.ca.gov)

Ms. Nancy Murray  
Office of the General Counsel, Sacramento, CA  
[Nmurray@dfg.ca.gov](mailto:Nmurray@dfg.ca.gov)

Messrs: Carl Wilcox and Paul Forsberg  
Water Branch, Sacramento, CA  
[Cwilcox@dfg.ca.gov](mailto:Cwilcox@dfg.ca.gov), [Pforsber@dfg.ca.gov](mailto:Pforsber@dfg.ca.gov)



# State Water Resources Control Board



## Division of Water Rights

1001 I Street, 14<sup>th</sup> Floor ♦ Sacramento, California 95814 ♦ 916.341.5300  
P.O. Box 2000 ♦ Sacramento, California 95812-2000  
Fax: 916.341.5400 ♦ www.waterboards.ca.gov/waterrights

Linda S. Adams  
Secretary for  
Environmental Protection

Arnold Schwarzenegger  
Governor

**R480**

### MEMORANDUM

**TO:** Gary Stacey, Regional Manager  
Department of Fish and Game  
Northern Region  
601 Locust Street  
Redding, CA 96001

**ORIGINAL SIGNED BY:**

**FROM:** Katherine Mrowka, Chief  
Inland Streams Unit  
**DIVISION OF WATER RIGHTS**

**DATE:** SEP 03 2009

**SUBJECT:** REQUEST FOR DEPARTMENT OF FISH AND GAME WRITTEN CONDITIONS FOR SMALL DOMESTIC USE REGISTRATION IN THE NAME OF DOUGLAS COLE, REGISTRATION NO. D030945R, CERTIFICATE NO. R480; DIVERSION FROM STANSHAW CREEK TRIBUTARY TO KLAMATH RIVER IN SISKIYOU COUNTY

On August 25, 2009 and August 27, 2009 the Division of Water Rights (Division) staff discussed or e-mailed the Department of Fish and Game (DFG) regarding Small Domestic Use (SDU) Certificate No. R480 regarding the lack of DFG written conditions for the SDU.

The Division of Water Rights (Division) received this Registration on September 9, 1999, and the Certificate was issued on November 30, 1999. Our records indicate that Division staff visited the site in May 1999. Mr. Squires, agent for Mr. Cole, indicated DFG had made a site visit and that Mr. Cole was entering into an Agreement with DFG. The Division never received either written conditions for the SDU, or a copy of the DFG Streambed Alteration Agreement. (DFG Code § 1600 et seq.)

Mr. Cole returned his Registrant Report and Request for Renewal in August, 2004, along with his renewal fee. A subsequent conversation with Yoko Mooring of this office and Jane Vorpagal, dated January 18, 2005, is summarized in a contact report in our records. Subsequently, on April 8, 2005, the Division sent Mr. Cole a letter requesting that he contact DFG again to obtain a written clearance letter from DFG. Division staff stated that his renewal was pending the DFG clearance letter. This office never received a letter from DFG regarding clearance for this SDU, and consequently, Certificate R480 has not been renewed.

Emails from Ms. Vorpagal of August 25 and 27, 2009 state that DFG has not issued clearance for this SDU, and DFG may require a new Streambed Alteration Agreement. The emails also state that Mr. Cole may need to file an Incidental Take permit for Coho. Please confirm in writing whether or not DFG will require either or both the Streambed Alteration Agreement and Incidental Take permit for this Registration.

SURNAME

*S. Wilson*  
9/2/09

California Environmental Protection Agency

Recycled Paper

*Rem 9-2-09*

000520

Gary Stacey, Regional Manager  
Department of Fish and Game

- 2 -

The ongoing protest regarding pending Application A029449, and the complaint regarding Mr. Cole's pre-1914 claim of right are separate issues and should be considered separately.

We will put a hold on the renewal process for this Registration for 45 days. If no response is received within 45 days of this letter, we will assume that DFG has determined that no special conditions for the Small Domestic Use Registration are required. We will proceed with the renewal process, if Mr. Cole submits his Report and Request for Renewal, along with the renewal fee.

Enclosures: Copy of Original Application  
Copy of Certificate R480

cc: (with enclosures)

Jane Vorpagal  
Department of Fish and Game  
Northern Region  
601 Locust Street  
Redding, CA 96001

bcc: Katherine Mrowka, Steve Herrera, Chuck Rich (electronic copy of memo only)

sjw:08282009: DCC: 09/02/09

u:\perdrv\swilson\LSU SDU Registration\D030945R DFG clearance memo 08282009

~~\_\_\_\_\_~~  
K480

KAM

Doug and Heidi Cole  
Marble Mountain Ranch  
92520 Highway 96  
Somes Bar, CA 95568  
(530) 469-3322

STATE WATER RESOURCES  
CONTROL BOARD

2008 FEB 13 PM 1:36

DIVISION OF WATER RIGHTS  
SACRAMENTO

January 9, 2007

Katherine Mrowka  
State Water Resources Control Board  
Division of Water Rights  
PO Box 2000  
Sacramento, CA 95812-2000

RE: Addressing National Marine Fisheries Service (NMFS) Protest Dismissal Conditions

Dear Mrs. Mrowka:

The National Marine Fisheries Service protest to our application (#29449) included five terms, which, if met, would prompt them to remove their protest. Below we have included a discussion of these terms and how we propose to address them, if funding is made available to facilitate implementation of such measures.

- a), b) **Diversion Intake: Limit diversion flow to a maximum of 3 cfs.  
Fish Screen: Screen intake with NMFS/DFG approved fish screen.**

We propose the design and installation of a head gate which will limit maximum diversion flow to 3 cfs. Gary Black with the Siskiyou Resource Conservation District has conducted initial field investigation to this end and proposed a concrete head gate out of the active channel consisting of an initial large compartment with two spillways: one back to Stanshaw Creek, and one into a smaller compartment for further settling. The spillway into the second compartment would be screen to prevent entrainment of salmonids. One or both compartments would be outfitted with a bottom flush to clear accumulated sediments. This design, as I understand from Mr. Black, meets DFG/NMFS fish screen criteria, as well as the requirements for diversion from such a steep stream with highly variable seasonal flow. Grant funding would be required to complete this mitigation step.

- c) **Return flow: Return diverted flow from Stanshaw Creek back to Stanshaw Creek instead of Irving Creek.**

Installation of a return flow pipe from the hydro plant back to Stanshaw Creek above the Highway 96 culvert via the inboard ditch of Highway 96 has been surveyed. Both the NRCS and a private contractor installing fiber optic along this stretch (Henkels and McCoy) have provided cost estimates for this project ranging from \$65,000 to \$110,000, respectively. Grant funding would be required to complete this mitigation step.

Recent developments have further confounded this proposal, however, as the owners of Blue Heron Ranch who currently capture the water from this system before it enters Irving Creek and put it to secondary use, have threatened to sue if this water is taken away. This secondary use is currently permitted under their SWRCB application D-31201 R and permit #R-590. This issue must be resolved by the DFG, NMFS, and the owners of Blue Heron Ranch.

However, one possible solution that is supported by Blue Heron is to maintain a portion of flow to Blue Heron Ranch sufficient to meet their needs. This solution also meets the needs of Marble Mountain Ranch in that it allows an emergency exit flow for diverted water in the event of a catastrophic failure of the return line along the Highway. A continued portion flow also provides for the maintenance of the existing Marble Mountain Ranch pond and agricultural uses of the water along the return route to Irving Creek.

- d) **Bypass flows: Maintain a minimum bypass flow of 1.5 cfs (50% of summer base flow) at all times.**

We are concerned that maintaining a minimum bypass flow of 1.5 cfs at all times would mean completely dewatering Marble Mountain Ranch for some period of the summer one out of every four years, and greatly decrease or prohibit the use of diverted water for hydroelectric use in most summers. NMFS letter to the SWRCB dated July 8, 2002, confirms that minimum modeled flows for Stanshaw Creek reach or drop below 1.5 cfs.

This minimum bypass flow also does not take into account increasing upstream consumptive uses by Stanshaw Creek riparian residents. These upstream consumptive uses for agriculture and domestic needs are entirely out of Marble Mountain Ranch Control and prohibit responsibility for Stanshaw Creek flow being entirely born by Marble Mountain Ranch.

**However, we are willing to maintain a summer creek flow sufficient meet DFG requirements for downstream resident fish passage, even though this will greatly increase the operating costs of our ranch due to increased generator usage.**

- e) **Monitoring: Provide California DFG personnel access to all points of diversion and places of use for conducting routine and/or random monitoring and compliance inspections.**

We welcome the DFG to monitor all points of diversion and places of use; however, in respect for private property rights and general decency, we would require some notice before DFG personnel enter onto our property. Our compliance with the above terms can be monitored effectively on a random basis by accessing the intake and outflow from public lands located along Stanshaw Creek. The outflow, once installed, could be easily checked from Highway 96, and the intake could be randomly checked by a moderate hike up Stanshaw Creek.

Please feel free to call us or write if you have any questions or comments regarding this letter. We have strived to meet all terms required by the NMFS, and believe we have done so in a manner that protects the anadromous fishery while preserving our ability to keep our business running.

Sincerely,

A handwritten signature in black ink that reads "Doug Cole". The signature is written in a cursive style with a large initial "D" and a long horizontal stroke at the end.

Doug and Heidi Cole



**REQUEST TO BOE FOR ACTION ON  
WATER RIGHT ACCOUNTS**

BOE Action Forms  
already signed and  
sent to BOE

For BOE Account Number: WR MT 094014417  
 Owner of Account: Douglas T Cole  
 Application Number (Ap ID #): A029449

**Please Make the Following Changes:**

Address Change: 92520 Highway 96, Somes Bar, CA 95568

New Agent Name: \_\_\_\_\_

Other: Delete the Agent Thomas J Doyle  
 (i.e. delete agent name, change Attention designee, etc.)

Closeout Account: No Date of closeout: \_\_\_\_\_  
 (Closeout of an account is to remove it from BOE records such as for revocation or change in ownership. A closeout date must be identified and would normally be either July 1 or June 30 of a Fiscal Year.)

Cancel Liability (billing): FY 03-04: \_\_\_\_\_ 04-05: \_\_\_\_\_ 05-06: \_\_\_\_\_ 06-07: \_\_\_\_\_ 07-08: \_\_\_\_\_

**If Payment has been Received:**

Refund Payment: FY 03-04: \_\_\_\_\_ 04-05: \_\_\_\_\_ 05-06: \_\_\_\_\_ 06-07: \_\_\_\_\_ 07-08: \_\_\_\_\_

Xfer to New Account: FY 03-04: \_\_\_\_\_ 04-05: \_\_\_\_\_ 05-06: \_\_\_\_\_ 06-07: \_\_\_\_\_ 07-08: \_\_\_\_\_

Comments: Since the board mistakenly assigned Mr. Doyle as agent, it is our recommendation that you cancel the liability for 07/08 and rebill Mr. Cole to the correct address without any penalties.

\* **If old owner paid, refund fees; if new owner paid, transfer fees to new account.**  
 (Specify if payment is to be refunded to old owner, new owner, and transferred to new account. Alternatively, specify if any payment should be retained when billing is cancelled.)

**Register New Account:**

AP ID #: A029449 Primary Owner Name ID: \_\_\_\_\_

New Primary Owner: \_\_\_\_\_

Attn Line Name (Agent): \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_ Phone number: \_\_\_\_\_

BOE Entity type: \_\_\_\_\_ I-Individual, C-Corporation, G-Government, etc.)

**Bill the New Account:**

Fee Amount: \_\_\_\_\_ Fiscal Year: \_\_\_\_\_

Start Date for New Account: \_\_\_\_\_ (Should be July 1 of FY)

Fee Type: \_\_\_\_\_  
 (Permit, License, Application, FERC, USBR Contractor)

**ORIGINAL SIGNED BY DIVISION STAFF Signed and sent to BOE on 1/25/2008**

REQUEST FOR WRIMS UPDATE

WR-5

DATE: 1/15/08

PROCESSED BY: OB

APPLICATION ID: A029449

APPLICATION ID(S) FOR RELATED FILINGS REQUIRING UPDATES:

TYPE OF CHANGE:

- OWNERSHIP (ADD, DELETE, ETC.)
- AGENT (ADD, DELETE, ETC.)
- ADDRESS ONLY.

OWNERSHIP CHANGE

- DELETE THE FOLLOWING OWNER(S):

COMMENTS:

- ADD THE FOLLOWING OWNER(S) -

OWNER NAME:

ADDRESS:

OWNER NAME:

ADDRESS:

COMMENTS: SPECIFY NEW PRIMARY OWNER/MAIL, NAME CHANGE FOR COMPANY OR TRUST

*OB*  
*1/18/08*

AGENT CHANGE

- DELETE THE FOLLOWING AGENT: THOMAS J DOYLE

COMMENTS:

- ADD THE FOLLOWING AGENT -

AGENT NAME:

ADDRESS:

COMMENTS:

*WRIMS*  
*AB*  
*1/16/08*

ADDRESS CHANGE

- CHANGE THE ADDRESS FOR (NAME):

OLD ADDRESS:

NEW ADDRESS:

NEW PHONE NUMBER:

COMMENTS:

**DIVISION OF WATER RIGHTS**  
**State Water Resources Control Board**  
**CONTACT REPORT**

**DATE:** 1/14/2008

**SUBJECT:** A029449

**DIVISION PERSONNEL:** Oscar Bautista.

**INDIVIDUAL/AGENCY CONTACTED:** Thomas Doyle

**PHONE:** (530) 469-3321.

**CONVERSATION DESCRIPTION:** I spoke with Mr. Doyle on Monday, January 14, 2008, regarding the current agent for this application. He told me that he was mistakenly placed as agent, due to a letter he sent to the board requesting information about the proceedings of the application. He is the manager of a firm which owns a neighboring property to the property covered by this application. I apologized for our mistake and I told him that I would correct the mistake and ensure that he be sent any correspondence regarding this application.

**DECISION(S):** N/A

**ACTIONS TAKEN:** Agent change

SURNAME				
---------	--	--	--	--

**SCHUERING ZIMMERMAN  
SCULLY TWEEDY & DOYLE, LLP**

Attorneys at Law

WR-5

L  
29449

400 University Avenue  
Sacramento, CA 95825-6502  
(916) 567-0400  
FAX: 568-0400  
Website: [www.szs.com](http://www.szs.com)

2008 JAN 16 AM 11:35

STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS  
SACRAMENTO

Leo H. Schuering, Jr.  
Robert H. Zimmerman  
Thomas J. Doyle\*  
Lawrence Scott Giardina\*  
Keith D. Chidlaw  
Dominique A. Pollara\*  
Theodore D. Poppinga  
Patricia S. Tweedy  
Brett School\*  
Kristine E. Balogh  
Jason S. Barnas\*  
Aimee L. Clark  
J. Hawken Flanagan  
Glenn M. Holley  
Christian Koster  
Brian A. Rosenthal  
Kat Todd-Schwartz  
David J. Van Dam

January 14, 2008

State Water Resources Control Board  
Division of Water Rights  
P.O. Box 2000  
Sacramento, CA 94812-2

\*Also admitted in Nevada

Re: App. Id. A029449

Steven T. Scully (1948-1994)

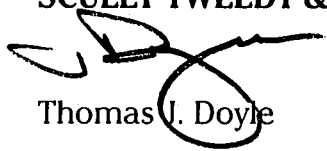
Gentlemen:

I am a member of KBH, LLC which owns Blue Heron Ranch at 93105 Hwy 96, Somes Bar, California. Blue Heron Ranch is near Marble Mountain Ranch which is owned by Doug Cole. I received first a Notice of Determination and then a Statement of Account; copies are enclosed. Both have my name and Mr. Cole's name. They refer to App. Id. A029449 which is an application filed by Marble Mountain Ranch.

I ignored the Notice of Determination because I assumed Mr. Cole received the same document. When I received the Statement of Account I wondered about my assumption. In any event, I assume the fee is something that Marble Mountain Ranch is suppose to pay. If for some reason my assumption is incorrect, notify me and provide an explanation why.

Very truly yours,

**SCHUERING ZIMMERMAN  
SCULLY TWEEDY & DOYLE, LLP**



Thomas J. Doyle

TJD:rrr  
Enclosures

cc: Doug Cole/Marble Mountain Ranch  
92520 Hwy 96  
Somes Bar, CA 95568



STATE OF CALIFORNIA  
 BOARD OF EQUALIZATION  
 P.O. BOX 942879 SACRAMENTO, CALIFORNIA 94279-0057  
 ENVIRONMENTAL FEES SECTION (916) 323-9555

FOR BOARD USE ONLY		WR-5
RE		PM
EFFECTIVE DATE OF PAYMENT		
MO	DAY	YEAR

DOUGLAS T COLE  
 Attn: THOMAS J DOYLE  
 400 UNIVERSITY AVE  
 SACRAMENTO CA 95825-6502

Account: WR EF 094-014417

Notice Id: 0000 5421 032	January 02, 2008
Amount past due	111.84
Amount enclosed	_____
Additional charges are due if not paid by 01/14/08 (See instructions below)	
	6

\* STATEMENT OF ACCOUNT \*

This statement reflects all amounts due from you on this account.

App.Id. A029449

Water Rights Fee	Fee	Interest	Penalty	Total
<b>WATER RIGHTS</b>				
DETERMINATION issued 10/15/07				
As determined				
For the Period 07/01/07-06/30/08				
Revenue	100.00			100.00
Penalty			10.00	10.00
Interest 11/15/07-01/14/08		1.84		1.84
Subtotal	100.00	1.84	10.00	111.84
Amount Past Due				111.84
*****				
Other Liabilities				
Total Other Liabilities				0.00
*****				
TOTAL ALL LIABILITIES				111.84

Additional interest will accrue in accordance with the Revenue and Taxation Code section 55041, 55042, 55050, 55061 on the unpaid Fee at the rate of 0.917 % per month. Interest of 0.92 will accrue if the Fee is not paid on or before 01/14/08.

The above assessment is based upon amounts due for the annual fee on a Water Right Application as required under California Code of Regulations, Title 23, Section 1063.

Prompt payment of all liabilities will prevent accrual of additional interest and/or penalties.

2008 JAN 16 AM 11:35  
 DIV OF WATER RIGHTS  
 SACRAMENTO  
 STATE WATER RESOURCES  
 CONTROL BOARD

Continued on back



Always write your account number: 094-014417 on your check or money order. Return this notice with your check in the enclosed envelope. Make a copy for your records.



STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS  
P.O. BOX 2000 SACRAMENTO, CALIFORNIA 95812-2000  
DIVISION OF WATER RIGHTS (916) 341-5431



FOR BOARD USE ONLY		WR-5
RE		PM
EFFECTIVE DATE OF PAYMENT		
MO	DAY	YEAR

DOUGLAS T COLE  
Attn: THOMAS J DOYLE  
400 UNIVERSITY AVE  
SACRAMENTO CA 95825-6502

Account: WR EF 094-014417

Notice Id:	0000 5257 578	October 15, 2007
Amount Due		100.00
Amount enclosed		_____
Additional charges are due if not paid by 11/14/07 (See instructions below)		
		6

\*\* Notice of Determination \*\*  
You are hereby notified of an amount due from you as shown below. Please visit our website at [www.boe.ca.gov](http://www.boe.ca.gov) to download publications 17 and 70 to help you better understand our appeals procedures and your rights.  
App.Id. A029449

Water Rights Fee	Fee	Interest	Penalty	Total
WATER RIGHTS				
DETERMINATION issued 10/15/07				
As determined				
For the Period 07/01/07-06/30/08				
Revenue	100.00			100.00
Subtotal	100.00	0.00	0.00	100.00

AMOUNT - DUE 100.00  
\*\*\*\*\*

Additional interest will accrue in accordance with the Revenue and Taxation Code section 55041, 55042, 55050, 55061 on the unpaid Fee at the rate of 0.917 % per month. Interest of 0.92 will accrue if the Fee is not paid on or before 11/14/07.

Additional penalty of 10.00 is due if not paid by 11/14/07.

The above assessment is based upon amounts due for the annual fee on a Water Right Application as required under California Code of Regulations, Title 23, Section 1063.

Information concerning Determinations

A person against who a determination is made or any person directly interested may petition for reconsideration with the State Water Resources Board within 30 days from the date shown at the top of this notice. The State Water Resources Control Board must receive the petition for reconsideration by the 30th day. A petition for reconsideration must be in writing and state the specific grounds upon which it is founded, including an explanation why the petitioner believes that no fee is due or how the petitioner believes that the

Continued on back



STATE WATER RESOURCES CONTROL BOARD  
2008 JAN 16 AM 11:36  
DIV OF WATER RIGHTS  
SACRAMENTO

Always write your account number: 094-014417 on your check or money order. Return this notice with your check in the enclosed envelope. Make a copy for your records.



<b>Siskiyou, CA MIKE MALLORY, ASSESSOR</b>		<b>ParcelQuest by CD-DATA</b>		
<input type="checkbox"/> <b>Property Address:</b>				
<b>Ownership</b>				
Parcel# (APN):	<b>026-290-270</b>	Use Description:		
Parcel Status:	<b>ACTIVE</b>			
Owner Name:	<b>COLE NORMAN D &amp; CAROLYN TAYLOR</b> <i>- CD-OWNERS</i>			
Mailing Addr:	<b>92520 HIGHWAY 96 SOMES BAR CA 95568</b>			
Legal Description:				
<b>Assessment</b>				
Total Value:	<b>\$599</b>	Use Code: <b>339</b>		
Land Value:	<b>\$599</b>	Tax Rate Area: <b>085000</b>		
Impr Value:		Year Assd: <b>2007</b>		
Other Value:		Property Tax:		
% Improved:		Delinquent Yr:		
Exempt Amt:	<b>\$1,000</b>	Exempt Codes: <b>N</b>		
Zoning:		Census Tract: <b>5.00/3</b>		
		Impr Type:		
		Price/SqFt:		
<b>Sale History</b>				
	<b>Sale1</b>	<b>Sale2</b>	<b>Sale3</b>	<b>Transfer</b>
Recording Date:	<b>03/05/2007</b>	<b>02/07/2005</b>	<b>07/02/2004</b>	<b>03/05/2007</b>
Recording Doc:	<b>20070002949</b>	<b>20050002125</b>	<b>20040010300</b>	<b>20070002949</b>
Rec. Doc Type:				
Transfer Amount:				
Seller (Grantor):	<b>COLE DOUGLAS T &amp; HEIDI A</b>			
1st Trust Dd Amt:				
2nd Trust Dd Amt:				
<b>Property Characteristics</b>				
Lot Acres:	Year Built:	Fireplace:		
Lot SqFt:	Effective Year:	A/C:		
Bldg/Liv Area:		Heating:		
Units:	Total Rooms:	Pool:		
Buildings:	Bedrooms:	Flooring:		
Stories:	Baths (Full):	Park Type:		
Style:	Baths (Half):	Spaces:		
Construction:	Bsmt SqFt: <b>N/A</b>	Site Influence:		
Quality:	Garage SqFt:			
Building Class:		Timber Preserve:		
Condition:		Ag Preserve:		
Other:				
Other Rooms:				

\*\*The information provided here is deemed reliable, but is not guaranteed. ParcelQuest by CD-DATA.

Siskiyou, CA MIKE MALLORY, ASSESSOR ParcelQuest by CD-DATA

Property Address:

**Ownership**

Parcel# (APN): 026-290-240 Use Description:  
 Parcel Status: ACTIVE  
 Owner Name: COLE NORMAN D & CAROLYN TAYLOR  
 Mailing Addr: 92520 HIGHWAY 96 SOMES BAR CA 95568  
 Legal Description:

**Assessment**

Total Value: \$12,532 Use Code: 339 Zoning:  
 Land Value: \$12,532 Tax Rate Area: 085000 Census Tract: 5.00/3  
 Impr Value: Year Assd: 2007 Impr Type:  
 Other Value: Property Tax: Price/SqFt:  
 % Improved: Delinquent Yr:  
 Exempt Amt: Exempt Codes: N

**Sale History**

	Sale1	Sale2	Sale3	Transfer
Recording Date:	03/05/2007	02/07/2005	07/02/2004	03/05/2007
Recording Doc:	20070002949	20050002125	20040010300	20070002949
Rec. Doc Type:				
Transfer Amount:				
Seller (Grantor):	COLE DOUGLAS T & HEIDI A			
1st Trust Dd Amt:				
2nd Trust Dd Amt:				

**Property Characteristics**

Lot Acres:	4.200	Year Built:	Fireplace:
Lot SqFt:	182,952	Effective Year:	A/C:
Bldg/Liv Area:			Heating:
Units:		Total Rooms:	Pool:
Buildings:		Bedrooms:	Flooring:
Stories:		Baths (Full):	Park Type:
Style:		Baths (Half):	Spaces:
Construction:		Bsmt SqFt: N/A	Site Influence:
Quality:		Garage SqFt:	
Building Class:			Timber Preserve:
Condition:			Ag Preserve:
Other:			
Other Rooms:			

\*\*The information provided here is deemed reliable, but is not guaranteed. ParcelQuest by CD-DATA.



<b>Siskiyou, CA</b>		<b>MIKE MALLORY, ASSESSOR</b>		<b>ParcelQuest by CD-DATA</b>	
<input type="checkbox"/> <b>Property Address: 92520 STATE HIGHWAY 96 SOMES BAR CA 95568-9713</b>					
<b>Ownership</b>					
Parcel# (APN):	<b>026-290-200</b>	Use Description:			
Parcel Status:	<b>ACTIVE</b>				
Owner Name:	<b>COLE NORMAN D &amp; CAROLYN TAYLOR</b>				
Mailing Addr:	<b>92520 HIGHWAY 96 SOMES BAR CA 95568</b>				
Legal Description:					
<b>Assessment</b>					
Total Value:	<b>\$668,185</b>	Use Code:	<b>339</b>	Zoning:	
Land Value:	<b>\$160,467</b>	Tax Rate Area:	<b>085000</b>	Census Tract:	<b>5.00/3</b>
Impr Value:	<b>\$507,718</b>	Year Assd:	<b>2007</b>	Impr Type:	
Other Value:		Property Tax:		Price/SqFt:	
% Improved:	<b>75%</b>	Delinquent Yr:			
Exempt Amt:	<b>\$7,000</b>	Exempt Codes:	<b>Y</b>		
<b>Sale History</b>					
	<b>Sale1</b>	<b>Sale2</b>	<b>Sale3</b>	<b>Transfer</b>	
Recording Date:	<b>03/05/2007</b>	<b>02/07/2005</b>	<b>07/02/2004</b>	<b>03/05/2007</b>	
Recording Doc:	<b>20070002949</b>	<b>20050002125</b>	<b>20040010300</b>	<b>20070002949</b>	
Rec. Doc Type:					
Transfer Amount:					
Seller (Grantor):	<b>COLE DOUGLAS T &amp; HEIDI A</b>				
1st Trust Dd Amt:					
2nd Trust Dd Amt:					
<b>Property Characteristics</b>					
Lot Acres:	<b>43.170</b>	Year Built:		Fireplace:	
Lot SqFt:	<b>1,880,485</b>	Effective Year:		A/C:	
Bldg/Liv Area:				Heating:	
Units:		Total Rooms:		Pool:	
Buildings:		Bedrooms:		Flooring:	
Stories:		Baths (Full):		Park Type:	
Style:		Baths (Half):		Spaces:	
Construction:		Bsmt SqFt:	<b>N/A</b>	Site Influence:	
Quality:		Garage SqFt:			
Building Class:				Timber Preserve:	
Condition:				Ag Preserve:	
Other:					
Other Rooms:					

\*\*The information provided here is deemed reliable, but is not guaranteed. ParcelQuest by CD-DATA.

T 13 N R 6 E H.M.

Tax Area Code 85-00

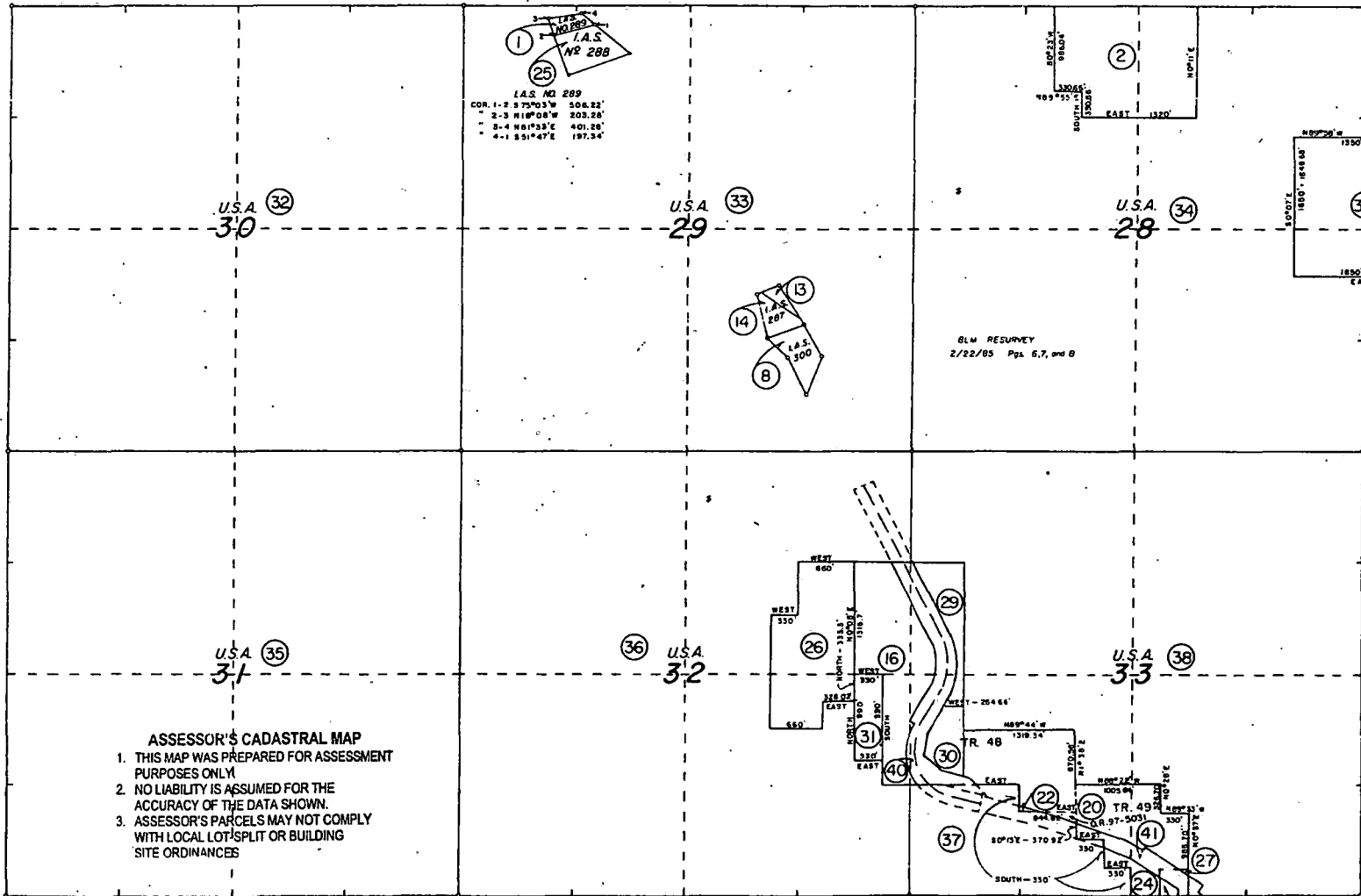
26-29

PAGE 25

PAGE 26

PAGE 15

PAGE 28



1  
 25  
 L.A.S. NO 288  
 L.A.S. NO 289  
 COR. 1-2 S 75° 03' W 506.22'  
 2-3 N 18° 08' W 203.28'  
 3-4 N 81° 33' E 401.28'  
 4-1 S 21° 47' E 197.34'

BLM RESURVEY  
 2/22/85 Pgs. 6, 7, and 8

**ASSESSOR'S CADASTRAL MAP**  
 1. THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY.  
 2. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN.  
 3. ASSESSOR'S PARCELS MAY NOT COMPLY WITH LOCAL LOT SPLIT OR BUILDING SITE ORDINANCES

BOOK 33

Assessor's Map  
County of Siskiyou, California



# 2007/08 PENDING APPLICATION ANNUAL FEE REVIEW

REVIEW COMPLETED BY:   
 DATE:

APPLICATION NUMBER

Was this application charged an annual fee for 2006/07?

OWNER

YES Was a public notice of the application issued?  
 If yes, what date?

Routing	
Person/Task	Initial & Date (Completed)
Reviewer (review complete)	
Senior (approve review)	<i>hdm 8/3/07</i>
SJW post on ledger and copy to Binder	<i>SJW 9/4/07</i>
Return original to [initials] for inclusion in App. File.	<b>FILES</b>

**IF ANY OF THE FIVE FOLLOWING CRITERIA ARE TRUE, AN ANNUAL FEE IS NEEDED**

YES Has the diversion of water, the construction of diversion works, or the clearing of land where the diverted water will be used or stored been initiated before a permit has been issued authorizing the diversion?  
**If you are uncertain** whether or not there is an existing or "threatened" diversion call the applicant/agent and write a contact memo to the file. If you have no evidence (verbal, written, picture, etc) of a diversion or threatened diversion you must answer "NO" to this question.

If yes, provide the name & date of item that provides evidence of this.  date

NO Is the application on hold because the applicant has requested any delay in processing?  
 If yes, provide the name & date of file item that provides evidence of this.  date

NO Is the applicant the CEQA lead agency and has the applicant failed to adopt or certify a final environmental document (as required) for the project within 2 years after the application was noticed?  
 If yes, provide the name & date of file item that provides evidence of this.  date

NO Has the applicant not submitted supplemental information as required by the Division of Water Rights under WC 1275?  
 If yes, provide the name & date of the file item that provides evidence of this.  date

NO Is the permit signed by the Division Chief and ready for issuance but the applicant has not paid the fees required by Public Resources Code 10005, Fish and Game Code 711.4, or other law?  
 If yes, provide the name & date of file item that provides evidence of this.  date



**ANNUAL FEE REQUIRED**

**NOTE: Complete Page Two of this form even if NO annual fee is required. Enter the diversion information and initial the dialog boxes concerning diversion data and WRIMS.**

NO Does this application include hydropower as a use (more than just incidental)?

<b>** Total Annual Diversion Limitation (if applicable)</b>	<b>2,168.100</b>	acre-ft
---	------------------	---------

Direct Diversion Calculations	POD:	POD:	POD:
	Purpose of Use:	Purpose of Use:	Purpose of Use:
Direct Diversion Rate (fill in only one rate for each POD)	3.000 cfs 0.000 gpm 0.000 gpd	0.000 cfs 0.000 gpm 0.000 gpd	0.000 cfs 0.000 gpm 0.000 gpd
Diversion season begin date	1/1/2007	1/0/1900	1/0/1900
Diversion season end date	12/31/2007	1/0/1900	1/0/1900
No. of days in diversion season	365.00 days	0.00 days	0.00 days
Direct Diversion Quantity(s)	2171.933 acre-ft	0.000 acre-ft	0.000 acre-ft
	POD:	POD:	POD:
	Purpose of Use:	Purpose of Use:	Purpose of Use:
Direct Diversion Rate (fill in only one rate for each POD)	0.000 cfs 0.000 gpm 0.000 gpd	0.000 cfs 0.000 gpm 0.000 gpd	0.000 cfs 0.000 gpm 0.000 gpd
Diversion season begin date	1/1/1900	1/0/1900	1/0/1900
Diversion season end date	1/1/1900	1/0/1900	1/0/1900
No. of days in diversion season	0.00 days	0.00 days	0.00 days
Direct Diversion Quantity(s)	0.000 acre-ft	0.000 acre-ft	0.000 acre-ft
<b>Total Annual Direct Diversion Quantity (calculated)</b>			<b>2,171.933</b> acre-ft
<b>Total Annual Direct Diversion Quantity Cap (if applicable)</b>			<b>0.000</b> acre-ft

Annual Storage Quantity	RES 1	RES 2	RES 3
Number of Refills (if applicable)	0.000 acre-ft 0.00	0.000 acre-ft 0.00	0.000 acre-ft 0.00
Diversion season begin date	1/0/1900	1/0/1900	1/0/1900
Diversion season end date	1/0/1900	1/0/1900	1/0/1900
No. of days in diversion season	0.00 days	0.00 days	0.00 days
	RES 4	RES 5	
Number of Refills (if applicable)	0.000 acre-ft 0.00	0.000 acre-ft 0.00	
Diversion season begin date	1/0/1900	1/0/1900	
Diversion season end date	1/0/1900	1/0/1900	
No. of days in diversion season	0.00 days	0.00 days	
<b>Total Annual Storage Quantity</b>			<b>0.000</b> acre-ft
<b>Total Annual Storage Quantity Cap (if applicable)</b>			<b>0.000</b> acre-ft

<b>Total Annual Diversion for Fee Calculation</b>	<b>2,168.100</b> ✓	acre-feet
---	--------------------	-----------

The 'Total Annual Diversion for Fee Calculation' above is based on the maximum quantity of water that may be diverted under the application/permit/license.

***I have checked the above-listed and verified the Total Annual Diversion Quantity against the "Max Use Ann" value in WRIMS. If the "Max Use Ann" is incorrect, I have completed the WRIMS Update Sheet and attached it to this review.***

KDM	Initials
-----	----------

<b>ANNUAL FEE DUE FOR 2007-08?</b>	<b>YES</b>
------------------------------------	------------

---

**Supplemental Worksheet for Annual Fees of Pending Applications and Petitions for Hydropower Facilities**

---

\*\* Please note that this form should only be used for apps/permits/licenses where hydropower is the primary use and other consumptive uses under the water right are considered incidental

Application No.

A029449

Permit No.

License No.

 N Is the project subject to FERC licensing?

The following information will determine whether the applicant/petitioner is subject to a hydropower annual fee discount pursuant to CCR section 1071:

 N For both pending applications and petitions, has the applicant/petitioner not submitted supplemental information as required under Water Code sections 1275 or 1701.3?

**The annual fee should be reduced by 50 percent**

*G.W.  
9/4/07*



General Query	Application	Applicant-Name/Link	Source - Tributary	Source - Pod	Water Use
	Term	Decision	Extension	FERC	Irrigation

Today's Date: 09/04/2007

WRAPP

Record Delete  Yes  No    Appl Id: A029449

WRUSE

Record Delete  Yes  No

Record Delete Reason

### Water Rights Use

Appl Id: A029449      Use Code: P LOV

Season Dd Primary Begin Month: <u>1</u>	Season Dd Primary Begin Day: <u>1</u>
Season Dd Primary End Month: <u>12</u>	Season Dd Primary End Day: <u>31</u>
Season Dd Second Begin Month: <u>0</u>	Season Dd Second Begin Day: <u>0</u>
Season Dd Second End Month: <u>0</u>	Season Dd Second End Day: <u>0</u>
Annual Dd: <u>2168.1</u>	Season Store Begin Month: <u>0</u>
Season Store Begin Day: <u>0</u>	Season Store End Month: <u>0</u>
Season Store End Day: <u>0</u>	Season Collect: <u>0</u>
Season Net Acres: <u>0</u>	Season Gross Acres: <u>0</u>
Population: <u>57</u>	Season Dd Primary Period: <u>365</u>
Season Dd Second Period: <u>0</u>	Season Store Period: <u>0</u>

Use Comments:

Record Update User Id: WHALENT

Record Update Date: 01/28/2000

Record Create User Id: SHIHJLIN

Record Create Date: 09/15/1994

**REQUEST TO BOE FOR ACTION ON  
WATER RIGHT ACCOUNTS**

BOE Action Forms  
already signed and  
sent to BOE

For BOE Account Number: WR MT 0 94014417  
Owner of Account: Douglas T Cole  
Application Number (Ap ID #): A029449

**Please Make the Following Changes:**

Address Change: 400 University Ave, Sacramento, CA 95825

New Agent Name: Thomas J Doyle

Other: \_\_\_\_\_  
(i.e. delete agent name, change Attention designee, etc.)

Closeout Account: No Date of closeout: \_\_\_\_\_  
(Closeout of an account is to remove it from BOE records such as for revocation or change in ownership. A closeout date must be identified and would normally be either July 1 or June 30 of a Fiscal Year.)

Cancel Liability (billing): FY 03-04 No FY 04-05 No FY 05-06 No FY 06-07 No

If Payment has been Received:  
Refund Payment (see comments): FY 03-04 \_\_\_\_\_ FY 04-05 \_\_\_\_\_ FY 05-06 \_\_\_\_\_ FY 06-07 \_\_\_\_\_  
Transfer to New Account: FY 03-04 \_\_\_\_\_ FY 04-05 \_\_\_\_\_ FY 05-06 \_\_\_\_\_ FY 06-07 \_\_\_\_\_

**Comments:**

**\* If old owner paid, refund fees; if new owner paid, transfer fees to new account.**  
(Specify if payment is to be refunded to old owner, new owner, and transferred to new account. Alternatively, specify if any payment should be retained when billing is cancelled.)

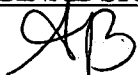
**Register New Account:**

AP ID #: A029449 Primary Owner Name ID: 10022188  
New Primary Owner: \_\_\_\_\_  
Attn Line Name (Agent): \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_ Phone number: \_\_\_\_\_  
BOE Entity type: \_\_\_\_\_ (I-Individual, C-Corporation, G-Government, etc.)

**Bill the New Account:**

Fee Amount: \_\_\_\_\_ Fiscal Year: \_\_\_\_\_  
Start Date for New Account: \_\_\_\_\_ (Should be July 1 of FY)  
Fee Type: \_\_\_\_\_  
(Permit, License, Application, FERC, USBR Contractor)

**ORIGINAL SIGNED BY DIVISION STAFF Signed and sent to BOE on 6/20/2007**



REQUEST FOR WRIMS UPDATE

WR-5

DATE: 6/14/2007

PROCESSED BY: MJY

APPLICATION ID: A029449

APPLICATION ID(S) FOR RELATED FILINGS REQUIRING UPDATES:

TYPE OF CHANGE:

- OWNERSHIP (ADD, DELETE, ETC.)
- AGENT (ADD, DELETE, ETC.)
- ADDRESS ONLY B

OWNERSHIP CHANGE

- DELETE THE FOLLOWING OWNER(S):

COMMENTS:

- ADD THE FOLLOWING OWNER(S) -

OWNER NAME:

ADDRESS:

OWNER NAME:

ADDRESS:

COMMENTS: SPECIFY NEW PRIMARY OWNER/MAIL, NAME CHANGE FOR COMPANY OR TRUST

AGENT CHANGE

- DELETE THE FOLLOWING AGENT:

COMMENTS:

- ADD THE FOLLOWING AGENT -

AGENT NAME: THOMAS J DOYLE (10036729)

ADDRESS: 400 UNIVERSITY AVE, SACRAMENTO, CA 95825

COMMENTS:

ADDRESS CHANGE

- CHANGE THE ADDRESS FOR (NAME):

OLD ADDRESS:

NEW ADDRESS:

NEW PHONE NUMBER:

COMMENTS:

JUN 18 2007

QC/BR JUN 20 2007

000640 WRIMS-DA



**SCHUERING ZIMMERMAN  
SCULLY TWEEDY & DOYLE, LLP**

Attorneys at Law

STATE WATER RESOURCES  
CONTROL BOARD

SLN  
WR-5 29449

400 University Avenue  
Sacramento, CA 95825-6502  
(916) 567-0400  
FAX: 568-0400  
Website: [www.szs.com](http://www.szs.com)

2007 JUN 12 AM 10  
Leo H. Schuering, Jr.  
Robert H. Zimmerman  
Thomas J. Doyle\*  
Lawrence Scott Giardina\*  
Keith D. Chidlaw  
Dominique A. Pollara\*  
Theodore D. Poppinga  
Patricia S. Tweedy  
Kristine E. Balogh  
Jason S. Barnas\*  
Glenn M. Holley  
Christian Koster  
Brian A. Rosenthal  
Brett Schoel\*  
David J. Van Dam

June 11, 2007

***Via Certified Mail***

Victoria A. Whitney, Chief  
Division of Water Rights  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812

\*Also admitted in Nevada

Steven T. Scully (1948-1994)

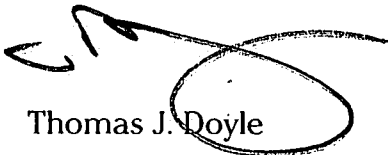
Re: Application of Marble Mountain Ranch (Application #29449)

Dear Ms. Whitney:

I am the manager for the Limited Liability Company that owns Blue Heron Ranch. I request notice of any further/future proceedings concerning Marble Mountain Ranch's application. Thank you for your assistance.

Very truly yours,

**SCHUERING ZIMMERMAN  
SCULLY TWEEDY & DOYLE, LLP**



Thomas J. Doyle

TJD:leh

ent AB  
6/13/07  
000541

# MARBLE MOUNTAIN RANCH

*M Marble Mountain Ranch*  
WR 29449  
RESOURCES  
2007 FEB 21  
266.0  
SACRAMENTO

Donald B. Koch, Regional Manager  
Northern California-Coast Region  
Department of Fish and Game  
601 Locust Street  
Redding, CA 96001  
Date 2/19/07

92520 Hwy 96  
Somes Bar, CA 95568  
T 530-469-3322  
guesranch@pcweb.net  
[www.marblemountainranch.com](http://www.marblemountainranch.com)

Regarding your letter of February 7, 2007 addressing application.29449:

I would like to thank you for your input on our application and our attempts to resolve your protests. I would also like to take this opportunity to address two areas of apparent misunderstanding regarding our operations at Marble Mountain Ranch and the nature of Stanshaw Creek flows.

The first issue is the request by DFG to maintain 2.5 cfs flows measured at the culverts below Hwy 96. We are concerned that maintaining a minimum bypass flow of 2.5 cfs at all times would mean completely de-watering Marble Mountain Ranch, upstream riparian users, and riparian users at the mouth of Stanshaw for some period of the summer nearly every year. NMFS letter to the SWRCB dated July 8, 2002, confirms that minimum modeled flows for Stanshaw Creek reach or drop below 1.5 cfs on a regular basis. The natural flows of Stanshaw creek are entirely out of the control of Marble Mountain Ranch as are the operations of other riparian consumptive users of Stanshaw Creek water.

However, we are willing to maintain a summer creek flow at the point of our diversion sufficient to meet requirements for downstream resident fish passage, even though this will greatly increase the operating costs of our ranch due to increased generator usage.

# MARBLE MOUNTAIN RANCH

92520 Hwy 96  
Somes Bar, CA 95568  
T 530-469-3322  
guesranch@pcweb.net  
[www.marblemountainranch.com](http://www.marblemountainranch.com)

The second issue relates to the operation of our hydroelectric plant. When captured flows drop below 3 cfs we do not make a system-wide switch to diesel generated power. As flows begin the seasonal drop, we modify our operations to reduce power use (such as eliminating air conditioners for guests), and modify timed use patterns. When hydro-power availability drops below our minimum configured operation, we begin to replace 1-4 legs of our hydro distribution grid with diesel power in an attempt to minimize fossil fuel consumption and its accompanying costs. On low water years we will at times make daily evolving power source switches between hydro and diesel power to meet changing diurnal use patterns and daily diurnal stream flow patterns. Total reliance on diesel power typically happens only during periods of system maintenance and repair. Additionally, we NEVER capture water for a frivolous and non-beneficial use. Other beneficial uses for our captured water include domestic consumptive needs, ongoing agricultural uses for maintenance of orchards, gardens, pastures, ranch fire prevention, pond maintenance, and stock needs as well as periodic use by USFS and CDF crews in large scale fire-camp support and finally downstream beneficial uses by Blue Heron Ranch operations. This water diversion is based on an 1865 water filing with a 1911 U.S. presidential proclamation permitting "any beneficial use" and our position is that all of our captured water is put to continuous and multiple beneficial uses. We view the diversion as a stewardship that benefits the public trust and we make every effort to reduce and eliminate any adverse impacts of the diversion.

When we (the Cole family) took possession of Marble Mountain Ranch in 1994, we made strategic choices to evolve operations away from a highly power consumptive use as a mobile home park. At that time there were 55 licensed RV hook-ups each running 30 amp circuits, as well as the existing outbuilding, home and cottage usage and agricultural uses. Our strategy from the beginning has been to search for an operational mode that would be profitable, ecologically sound, and would suit our family business interests. This evolution has led us to the current

# MARBLE MOUNTAIN RANCH

"guest ranch" profile that has eliminated the R.V. use and relied on a much smaller ranch population.

We are entirely willing to continue exploring any viable alternatives to power generation such as solar supplementation. We are also willing to return a portion of captured flows to the mouth of Stanshaw and to improve ditch water transportation. All of these improvements will require grant funding in order to implement the changes.

92520 Hwy 96  
Somes Bar, CA 95568  
T 530-469-3322  
[guestranch@pcweb.net](mailto:guestranch@pcweb.net)  
[www.marblemountainranch.com](http://www.marblemountainranch.com)

One final point I would like to address is the need to look at global Stanshaw creek usage rather than a limited Marble Mountain Ranch use perspective. There is consumptive use by land owners at the creek confluence, there is significant consumptive usage by upstream Patterson Ranch residents and a historic secondary use of diverted water by Blue Heron Ranch operations. While we claim a historical priority position to these other riparian users, we are not currently calling for any more than a recognition that these uses exist. We find it unrealistic and unfairly burdensome to place management of creek flows entirely in the circle of responsibility of Marble Mountain Ranch. We cannot create 2.5 cfs below the Hwy 96 culvert while natural flows regularly drop below 1.5 cfs and while ignoring the uses and needs of all Stanshaw creek water users.

Sincerely yours,



Douglas T. Cole

# MARBLE MOUNTAIN RANCH

cc. Mr. James R. Bybee  
NOAA Fisheries  
777 Sonoma Avenue, Room 325  
Santa Rosa, CA 95404

Ms. Katherine Mrowka,  
Chief Watershed unit 3  
Division of Water Rights  
P.O. Box 2000  
Sacramento, CA 95812-2000

92520 Hwy 96  
Somes Bar, CA 95568  
T 530-469-3322  
[guestranch@pcweb.net](mailto:guestranch@pcweb.net)  
[www.marblemountainranch.com](http://www.marblemountainranch.com)

Ms. Jane Vorpapel  
Department of Fish and Game  
601 Locut Street  
Redding, CA 96001

Margaret Tauzer  
National Marine Fisheries Service  
1655 Heindon Road  
Arcata, CA 95521

## Memorandum

STATE WATER RESOURCES  
CONTROL BOARD

To: Ms. Katherine Mrowka, Chief  
Watershed Unit 3  
Division of Water Rights  
P.O. Box 2000  
Sacramento, CA 95812-2000

2008 FEB 13 PM 2:52

Date: February 7, 2007

DIV. OF WATER RIGHTS  
SACRAMENTO

From: **DONALD B. KOCH**, Regional Manager  
Northern California-North Coast Region  
Department of Fish and Game  
601 Locust Street  
Redding, CA 96001

Subject: Application 29449 of Doug Cole, Marble Mountain Ranch, Stanshaw Creek, Siskiyou County

The Department of Fish and Game has received your December 6, 2006, letter which states there has been recent progress in addressing the public trust resource needs associated with Application 29449. You requested a response within 45 days which states any proposed protest dismissal conditions that have been developed for this matter. The Department is not sure what progress you are referring to. Department staff attempted to call you, however, you have been out of the office for several weeks. An attempt was made by the Department to assist the land owner with grant funding to route diverted water back to the Stanshaw Creek watershed. That grant was not funded due, in part, to the unresolved water right issues relating to this diversion.

This diversion was the subject of a complaint investigation as well as a protest on Water Right Application 29449 by the Department on March 17, 2000. The Department has written several letters which should be in the Board's records. Our latest correspondence was a July 5, 2005, letter to Mr. Doug Cole which outlined our primary concerns with this diversion. Board staff received a copy of that letter.

As we stated in our November 20, 2001, letter to the Board, as well as in our letter to Mr. Cole, our primary concerns are for the coho salmon (*Onchorhynchus kisutch*) which rear in the lower reach of Stanshaw Creek below Highway 96.

We believe the Highway 96 culverts are currently a barrier to upstream migration of fish. The Department, therefore, has focused our concerns and mitigation measures on the 0.25 mile stream reach downstream of these culverts. This stream reach is characterized by deep pools, large woody debris, dense overhanging riparian cover shading the stream, and generally cool water temperatures thus providing good rearing and refuge habitat for juvenile coho salmon and steelhead trout (*Oncorhynchus mykiss*).

Ms. Katherine Mrowka  
February 7, 2007  
Page Two

Coldwater habitats such as those provided by Stanshaw Creek are important refuges for juvenile coho salmon which may need to escape the warmer temperatures and low dissolved oxygen levels occasionally found in the Klamath River during the warm summer and early fall months. However, critical coldwater refuge habitats for coho salmon and steelhead in lower Stanshaw Creek need to be accessible to the fish, so sufficient water needs to stay in the stream to maintain connectivity to the Klamath River all year.

The Department currently proposes year-round bypass flows of 2.5 cubic feet per second (cfs) to be measured at the culverts below Highway 96 to mitigate potential impacts from the diversion on Stanshaw Creek. Our objective for these flows is to ensure that existing instream habitat conditions in Stanshaw Creek for coho salmon and steelhead are maintained. Water temperatures should remain cold and year-round access to the stream from the Klamath River is a better guarantee. To accomplish this objective, we recommend the total stream flow be bypassed whenever it is less than the designated amount. Based on field reviews and best professional judgment, it was determined that 2.5 cfs should maintain connectivity and an adequate channel which allows young salmonids access to Stanshaw Creek from the Klamath River. However, the Department may require additional bypass flows in the future if conditions change such that 2.5 cfs is no longer adequate to allow salmonid passage at the mouth of Stanshaw Creek. Future modification of the barriers or more detailed studies may also indicate a need for higher instream flows.

It is our understanding from discussions with Board staff that water is currently diverted from Stanshaw Creek even when there is not enough flow to run the hydroelectric generators. We believe this procedure results in water being wasted and not being put to beneficial use. This procedure typically occurs during critically dry periods when natural flows are needed to maintain salmonid access from the Klamath River to cooler water, rearing, and refuge habitat found in Stanshaw Creek. If the stream flow in Stanshaw Creek is less than the amount needed to run the hydroelectric plant (3 cfs), then water for power generation should not be diverted and the entire natural flow of Stanshaw Creek should be bypassed to maintain the downstream fishery resources.

During both inspections, various options were discussed which could help satisfy the required downstream flow conditions. We believe two options have merit for the Board and the owner to consider. One option would be returning diverted flows back to Stanshaw Creek after the water is used to generate electricity. Currently, tailwater is discharged to the adjacent drainage of Irvine Creek. Second, improvements to the open ditch system and/or updating the hydroelectric generation system may also allow the applicant to divert less water while still meeting the needs for domestic purposes and electric generation.

Ms. Katherine Mrowka  
February 7, 2007  
Page Three

If you have any questions or comments regarding this memorandum, please contact Staff Environmental Scientist Jane Vorpapel at (530) 225-2124.

cc: Mr. James R. Bybee  
NOAA Fisheries Service  
777 Sonoma Avenue, Room 325  
Santa Rosa, CA 95404

Mr. Doug Cole, et al.  
92520 Highway 96  
Somes Bar, CA 95568

Ms. Jane Vorpapel  
Department of Fish and Game  
601 Locust Street  
Redding, CA 96001

ec: Ms. Jane Vorpapel  
jvorpapel@dfg.ca.gov



# MARBLE MOUNTAIN RANCH

92520 Hwy 96 • Somes Bar, CA 95568 • 800-552-6284 • Fax 530-469-3321

January 4, 2007

**Steve Herrera**  
State Water Resources Control Board  
Division of Water Rights  
P.O. Box 1000  
Sac, CA 95812

DIV OF WATER RIGHTS  
SACRAMENTO

2007 JAN -9 PM 2:49

STATE WATER RESOURCES  
CONTROL BOARD

Dear Mr Herrera:

Application 29449 of Douglas T. Cole, Stanshaw Creek in Siskiyou Co.

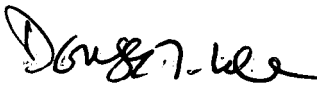
As per our phone conversation, I am requesting an extension of 1 month to finish a response to Katherine Mrowka's letter dated Dec 06, 2006.

I have been attempting to put together a grant for funding of improvements to our diversion that would mitigate many of the protestant concerns. This grant proposal is now in the process of evaluation for funding.

I intend to respond to Ms. Mrowka's letter with a summary of our proposal and an itemized response to each of our protestant's concerns.

Thank you for consideration.

Sincerely,



Douglas T. Cole

**From:** Kathy Mrowka  
**To:** guestranch@pcweb.net  
**Date:** 1/23/2007 11:09:16 AM  
**Subject:** Application 29449

Your January 4, 2007 request for a one month extension of time to respond to the Division of Water Rights December 6, 2006 letter is granted.

Sincerely,

Katherine Mrowka, Chief  
Watershed Unit 3  
Division of Water Rights

(916) 341-5363  
fax (916) 341-5400

29449

**Kathy Mrowka - Application 29449**

---

**From:** "Thomas Doyle" <TJD@szs.com>  
**To:** <kmrowka@waterboards.ca.gov>  
**Date:** 12/11/2006 10:58 AM  
**Subject:** Application 29449

---

As we discussed today, I am one of the owners of Blue Heron Ranch. You indicated you will send me information concerning the above application by Doug Cole. Thank you for your cooperation and assistance.

*ALC*



# State Water Resources Control Board



Linda S. Adams  
Secretary for  
Environmental Protection

Division of Water Rights  
1001 I Street, 14<sup>th</sup> Floor ♦ Sacramento, California 95814 ♦ 916.341.5300  
P.O. Box 2000 ♦ Sacramento, California 95812-2000  
Fax: 916.341.5400 ♦ www.waterrights.ca.gov

Arnold Schwarzenegger  
Governor

DEC 06 2006

In Reply Refer  
to:334:KDM:29449

Thomas J. Doyle  
Schuering, Zimmerman, Scully,  
Tweedy & Doyle  
400 University Avenue  
Sacramento, CA 95825-6502

Dear Mr. Doyle:

APPLICATION 29449 OF DOUGLAS T. COLE, STANSHAW CREEK IN  
SISKIYOU COUNTY

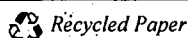
Your November 22, 2006 letter advised the Division of Water Rights (Division) that you are the manager of KBH, LLC, which owns a piece of real property known as the Blue Heron Ranch. Doug Cole owns an adjoining piece of real property, known as the Marble Mountain Ranch.

Currently, Mr. Cole diverts water from Stanshaw Creek via 5,200 feet of earthen channel and 455 feet of steel pipeline. After using the water to generate power and for domestic use, the excess flow is discharged into Irving Creek.

You indicate that Mr. Cole has applied for a grant to study returning water taken from Stanshaw Creek to Stanshaw Creek in lieu of diverting Stanshaw Creek water to Irving Creek. You assert that the Blue Heron Ranch has riparian rights to water flowing through the ditch system and any action to reduce flows in the diversion system would be injurious to your rights. You indicate that Blue Heron ranch has water rights pursuant to Certificate Number R590 and also has U.S. Forest Service water transmission rights. The Division has no record of a water right on Stanshaw Creek or Irving Creek for your client. Moreover, a riparian right is only applicable for the natural flow of the source, used on land that is contiguous to the source, provided the land is located within the watershed of the source. Inasmuch as Irving Creek flow is enhanced by diversions from Stanshaw Creek, the supplemental water cannot be used under riparian right claim. Inasmuch as your diversion is occurring on Forest Service land, the water is being appropriated for use and a riparian claim does not attach.

Division staff investigated your claim for diversion pursuant to Certificate Number R590. This certificate is held by Neil Tocher and authorizes diversion from an Unnamed Stream tributary to Irving Creek in Shasta County. Application 29449 of Doug Cole is for diversion in Siskiyou County. These matters appear to be unrelated.

California Environmental Protection Agency



000552

SURNAME

RLM 12-6-06

Thomas J. Doyle

- 2 -

If you have any questions, I can be contacted at (916) 341-5363.

Sincerely,

**ORIGINAL SIGNED BY:**

Katherine Mrowka, Chief  
Watershed Unit 3

KDMrwo: kdm/xrivera:12-05-06  
U:\PERDRV\Kathy Mrowka\29449 doyle.doc



**Linda S. Adams**  
Secretary for  
Environmental Protection

# State Water Resources Control Board

## Division of Water Rights

1001 I Street, 14<sup>th</sup> Floor ♦ Sacramento, California 95814 ♦ 916.341.5300  
Mailing Address: P.O. Box 2000 ♦ Sacramento, California 95812-2000  
FAX: 916.341.5400 ♦ www.waterrights.ca.gov



**Arnold Schwarzenegger**  
Governor

## MEMORANDUM

**TO:** Jane Vorpapel  
**CALIFORNIA DEPARTMENT OF FISH AND GAME**  
601 Locust Street  
Redding, CA 96001

### ORIGINAL SIGNED BY:

**FROM:** Katherine Mrowka, Chief  
Watershed Unit 3  
**DIVISION OF WATER RIGHTS**

**DATE:** DEC 06 2006

**SUBJECT:** APPLICATION 29449 OF DOUG COLE, MARBLE MOUNTAIN RANCH,  
STANSHAW CREEK IN SISKIYOU COUNTY

Division of Water Rights (Division) staff understands that there has been recent progress in addressing the public trust resource needs associated with Application 29449. A response is requested within the next 45 days that states any proposed protest dismissal conditions that have been developed for this matter.

I can be contacted at (916) 341-5363.

**cc:** Douglas Cole  
Marble Mountain Ranch  
92520 Highway 96  
Somes Bar, CA 95568

Will Harling  
Mid Klamath Watershed  
P.O. Box 764  
Somes Bar, CA 95568

KDMrowka:kdm/xrivera:12-05-06  
U:\PERDRV\Kathy Mrowka\29449dfg.doc



# State Water Resources Control Board



## Division of Water Rights

1001 I Street, 14<sup>th</sup> Floor ♦ Sacramento, California 95814 ♦ 916.341.5300  
P.O. Box 2000 ♦ Sacramento, California 95812-2000  
Fax: 916.341.5400 ♦ www.waterrights.ca.gov

Linda S. Adams  
Secretary for  
Environmental Protection

Arnold Schwarzenegger  
Governor

DEC 06 2006

In Reply Refer  
to:334:KDM:29449

Douglas Cole  
Marble Mountain Ranch  
92520 Highway 96  
Somes Bar, CA 95568

Dear Mr. Cole:

APPLICATION 29449 OF DOUGLAS T. COLE, STANSHAW CREEK IN  
SISKIYOU COUNTY

The National Marine Fisheries Service (NMFS) protested Application 29449 on the basis of potential injury to public trust resources. NMFS provided protest dismissal conditions by letter dated November 15, 2001. The Division has no record to indicate whether you concur with the dismissal conditions. A response is requested within the next 45 days stating whether you are amenable to the conditions or if the conditions have been modified subsequent to the November 15 letter and you are amenable to the modified conditions.

If you have any questions, I can be contacted at (916) 341-5363.

Sincerely,

**ORIGINAL SIGNED BY:**

Katherine Mrowka, Chief  
Watershed Unit 3

cc: National Marine Fisheries Service  
Southwest Region  
777 Sonoma Avenue, Room 325  
Santa Rosa, CA 95404

Will Harling  
Mid Klamath Watershed  
P.O. Box 764  
Somes Bar, CA 95568

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*California Environmental Protection Agency*

Recycled Paper

000555

SURNAME

*KDM 12-6-06*

SRH  
~~29449~~  
29449

**SCHUERING ZIMMERMAN  
SCULLY TWEEDY & DOYLE, LLP**  
ATTORNEYS AT LAW  
RESOURCES CONTROL BOARD

400 University Avenue  
Sacramento, CA 95825-6502  
(916) 567-0400  
FAX: 568-0400  
Website: [www.szs.com](http://www.szs.com)

2006 NOV 30 PM 1:14

DIV OF WATER RIGHTS  
SACRAMENTO

Leo H. Schuering, Jr.  
Robert H. Zimmerman  
Thomas J. Doyle\*  
Lawrence Scott Giardina\*  
Keith D. Chidlaw  
Dominique A. Pollara\*  
Theodore D. Poppinga  
Patricia S. Tweedy  
Kristine E. Balogh  
Jason S. Barnas\*  
Paul A. Cardinale\*  
Glenn M. Holley  
Christian Koster  
Brian A. Rosenthal  
Brett Schoel\*  
David J. Van Dam

\*Also admitted in Nevada

Steven T. Scully (1948-1994)

November 22, 2006

State of California  
California Environmental Protection Agency  
State Water Resources Control Board  
Division of Water Rights  
P.O. Box 2000  
Sacramento, CA 95812-2000

Ladies and Gentlemen:

I am the manager of KBH, LLC, and it owns a piece of real property on Highway 96 in Siskiyou County; attached is a legal description of the real property. The real property is commonly known as the Blue Heron Ranch.

Doug Cole owns an adjoining piece of real property, that is commonly known as Marble Mountain Ranch. It is our understanding he has a permit to take water from Stanshaw Creek for various uses on Marble Mountain Ranch. The water then flows into a bypass and the bypass flows into Irving Creek. Irving Creek flows through the Blue Heron Ranch. It is our understanding the bypass has been in place and it has been used by prior owners of Marble Mountain Ranch since the early 1900's.

It is our understanding Mr. Cole applied for a grant to study returning the water taken from Stanshaw Creek to Stanshaw Creek, rather than using the bypass. It is our understanding the grant was denied, but Mr. Cole is continuing to pursue the matter.

We object to any application to reroute the water Mr. Cole takes from Stanshaw Creek. We object to any grant to study or pay for such a project. The Blue Heron Ranch has riparian rights to the water flowing through the bypass. It has state water rights to the water pursuant to Certificate Number R590. Also, the Blue Heron Ranch has U.S. Forest Service water transmission rights.

Please notify me if Mr. Cole, or anyone on his behalf has a pending application or a pending grant. If there is a pending application or pending grant, the Blue Heron Ranch will request an in-kind pipeline up Irving Creek to replace the lost water and it will request repayment of any required restoration costs.



I look forward to hearing from you.

Very truly yours,

**SCHUERING ZIMMERMAN  
SCULLY TWEEDY & DOYLE, LLP**



Thomas J. Doyle

TJD:leh  
Enclosure

cc: Roger Thomas

A 29449

**From:** Doug Cole <guestranch@pcweb.net>  
**To:** Kathy Mrowka <KMROWKA@waterboards.ca.gov>  
**Date:** 1/3/2006 1:17:15 PM  
**Subject:** Marble Mountain Ranch

Katherine Mrowka  
State Water Resources Control Board

Dear Ms. Mrowka,

Carl Eastlick (Siskiyou Telephone) has just called me and relayed the following information:

There is no CEQA document for this Siskiyou Telephone project because there was a categorical class V exemption for this project. The state project number is #02-937700 and the permit is #0204-6UK-0342. Mr Eastlick has the documents on file and the supporting studies that lead to the class V exemption. He is willing to fax them to me or you as needed.

Perhaps you can reference the project and permit numbers to your letters.

Sincerely,  
Doug Cole

**From:** Doug Cole <gustranch@pcweb.net>  
**To:** Kathy Mrowka <KMROWKA@waterboards.ca.gov>  
**Date:** 1/3/2006 12:50:48 PM  
**Subject:** Marble Mountain Ranch

Katherin Mrowka  
State Water Resources Control Board

Dear Ms. Mrowka,

Here are the details of our Phase I project to return flow above the anadromous section of Stanshaw Creek. I am waiting for the Siskiyou Telephone CEQA document number and will forward it when I receive it.

This project will pipe return water diverted from Stanshaw Creek to Marble Mountain Ranch for power generation back to Stanshaw Creek. Currently as much as 3 cfs is diverted via ditch out of the Stanshaw Creek basin into Irving Creek.

This project will install a 12" return flow pipe from the hydroelectric plant on Marble Mountain Ranch to the upstream inlet of the Stanshaw Creek Highway 96 culvert (3200 ft). This project is located 7.5 miles north of Somes Bar, CA, along Hwy 96 and is approx. 1800 feet above the confluence of Stanshaw Creek with the Klamath River.

The private lands section ditch and pipe is 580 ft from the MMR hydro plant and crosses MMR property to the inboard ditch on HWY 96. From there it proceeds 2060 ft along the Highway 96 inboard ditch, and 460 ft across level fill to the top of the Stanshaw Creek culvert above HWY 96 (all Cal Trans right of way).

This work is proposed to be completed during an excavation by Siskiyou Telephone Company during an installation of fiber optic cable. The return piping will be placed parallel to the fiber optic cable in the same excavated cable ditch line.

The contact field person for Siskiyou Telephone is Carl Eastlick (467-6151, cell 598-1617). Mr. Eastlick has their CEQA documents on file in his Fort Jones office and is going to forward that document number to me on his return to the office. The contractor completing the installation is Henkels & McCoy and the contact person for that firm is Rob Thomas.

For your information, I am going to try and format our grant proposal to add to your file.

Best Regards, Doug Cole

**From:** Doug Cole <gustranch@pcweb.net>  
**To:** "Kathy Mrowka" <KMROWKA@waterboards.ca.gov>  
**Date:** 12/8/2005 1:39:30 PM  
**Subject:** Re: Re:

Hi Katherine, I should also try to outline for the the layout of our diversion:

A catch-berm diverts water from Stanshaw creek into an earthen berm ditch. This ditch line carries the water 3/4 mile at a maximum 3 cfs capacity to the head of our hydroplant penstock. The water enters the penstock, drops 200 vertical feet, and turns our pelton wheel and generator. From this point on, effluent water continues across the back of our ranch and is diverted in consumptive agricultural uses. The hydro generation occurs prior to consumptive use and again argues against the descriptor of "incidental".

Doug Cole

On Dec 8, 2005, at 11:02 AM, Kathy Mrowka wrote:

> A hydroelectric power generation project can be considered  
> "incidental" to an ongoing use of water if there is no change in  
> the rate and timing of flows as a result of operating the power  
> project. In other words, if you diverted 5 cfs into the canal for  
> the domestic use and did not increase diversions to operate the  
> power project, the use is considered incidental and a water right  
> permit is not required. If, however, you only require 1 cfs for  
> domestic use and you divert an additional 4 cfs to operate the  
> power project, the use is not incidental and a water right permit  
> is required.

> Please respond and tell me how your project is operated.

> Sincerely,

> Katherine Mrowka, Chief  
> Watershed Unit 3  
> Division of Water Rights

> (916) 341-5363  
> fax (916) 341-5400

>>>> Doug Cole <gustranch@pcweb.net> 12/6/2005 9:04 AM >>>

> Hi Katherine, I am attaching several documents for your information:  
> Our current CDFG grant application to improve our diversion, a copy  
> of our letter to M. Tauzer at NOAA, and a response to your letter  
> dated Nov 9 2005 requesting a Memorandum of Understanding and  
> environmental reports.

> In sum, I am requesting exemption by CEQA code section 15328 and a  
> removal of our application for hydrogeneration. The application  
> appears redundant, given the ongoing and historical nature of the  
> diversion and accompanying hydrogeneration and given the improvements  
> to be made to the diversion as mitigations of CDFG and NOAA protests.

- >
- > I look forward to your response,
- >
- > Doug Cole
- >
- >

**From:** Doug Cole <gustranch@pcweb.net>  
**To:** "Kathy Mrowka" <KMROWKA@waterboards.ca.gov>  
**Date:** 12/8/2005 1:25:04 PM  
**Subject:** Re: Re:

Hi Katherine, the answer is steeped in historical use and obscured by legislative categorization.

Original diversions totaled 600 miners inches at the inception of Stanshaw Mining Co in the 1860s. The 1911 U.S. patent papers signed by U.S. President Taft "assigns water rights for mining, agricultural, manufacturing or other purposes, and rights to ditches and reservoirs ...". As the mining operations truncated, so did the water diversions. By the 1950s there remained just one segment of the original ditch lines still in-tact and in use. This is the line currently supplying what now is Marble Mountain Ranch. Our position is simply that the remaining ditch has a limiting carrying capacity which defines and limits the remaining portion of the Stanshaw water right (approximately 2.5-3 cfs).

The nature of the use of the diverted water has obviously evolved over the 160 years of the diversion. The original mining operation diverted water for use in hydraulic mining gold ore, and in the support of mining staff with domestic consumption, agricultural use, AND in small hydroelectric generation via DC power supply to process ore, support housing, and to support ranch retail endeavors and agricultural operations. While the mining operations have long been abandoned, the ongoing generation of power continued to support housing for the ranch residents, State Highway workers constructing the new HWY 96, and to support the housing for the newly established U.S. Forest Service personnel residing on the ranch. The Stanshaw ditch lines have in an uninterrupted fashion provided 160 years of water in beneficial use for a broad range of uses, to ranch residents, California State employees, Federal employees, tribal interests and included hydro-generation that continues to date.

The "incidental" generation of power is a somewhat misleading term, since the original diversion of the water had hydrogeneration as a primary and increasingly important beneficial use of the water, with the hydro-generation falling into the "other uses" category listed by President Taft in 1911. While I search for a way to satisfy current State and Federal regulations, I sometimes find it difficult to exactly match descriptive categories created by our legislators. The CEQA section 15328 exemption for hydro-generation almost exactly matches our situation, but implies a NEWLY proposed hydro-generation facility. This hydro-generation is a century old and predates CEQA regulations. If I try to EXACTLY match the 15328 section I fall prey to the introduction of "incidental" into the description of our hydroplant.

Ultimately, Marble Mountain Ranch hopes to end protestant concerns with improvements to the Stanshaw diversion. To that end, I am hoping to find the most streamlined positioning in the SWRCB records and focus on technical solutions in the field that are supported by CDFG and NOAA. That position is simply recognizing the historical hydro-generation that accompanies this pre-1914 diversion.

Some salient points:

1. Some form of the Stanshaw water right will continue based on the 1911 presidential proclamation that satisfies pre-1914 water laws AND will accompany the same protestant concerns for the diversion regardless on continued hydro-generation.
2. Our current intentions are aimed at mitigating protestant concerns over the Stanshaw diversion, and to that end we are prepared to return hydroplant effluent to the mouth of Stanshaw and re-water the anadroamous section of Stanshaw Creek, and to improve transport efficiency of the ditch to minimize water loss.
3. Grant funding is currently available to improve the Stanshaw diversions and mitigate the remaining protestant concerns. Cal Fish and Game is supportive of our mitigation efforts, and is prepared to fund our grant applications IF we can successfully solicit letters of support from NOAA and SWRCB. Current discussions with NOAA are encouraging and look to positive solutions.

The acceptance of our pre-1914 diversion inclusive of it's hydro-generation most accurately describes the Stanshaw history, and will most effectively position us to secure funding from CDFG and NRCS to mitigate protestant concerns. Time is of the essence in the mitigations of the protestant concerns. Serendipitous timings by Siskiyou Telephone fiber optics installations in the spring of 2006 will provide the route for the return of hydroplant effluent. Funding is momentarily available at CDFG and NRCS to complete the improvements.

Sincerely,

Doug Cole  
Marble Mountain Ranch

Since that water has without interruption been used for beneficial purposes

On Dec 8, 2005, at 11:02 AM, Kathy Mrowka wrote:

- > A hydroelectric power generation project can be considered
- > "incidental" to an ongoing use of water if there is no change in
- > the rate and timing of flows as a result of operating the power
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- > the domestic use and did not increase diversions to operate the
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- > permit is not required. If, however, you only require 1 cfs for
- > domestic use and you divert an additional 4 cfs to operate the
- > power project, the use is not incidental and a water right permit
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- > Please respond and tell me how your project is operated.
- >
- > Sincerely,

>  
> Katherine Mrowka, Chief  
> Watershed Unit 3  
> Division of Water Rights  
>  
> (916) 341-5363  
> fax (916) 341-5400  
>  
>  
>

>>>> Doug Cole <gustranch@pcweb.net> 12/6/2005 9:04 AM >>>  
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> I look forward to your response,  
>

> Doug Cole  
>  
>



# MARBLE MOUNTAIN RANCH

Katherine Mrowka  
SWRCB  
Division of Water Rights  
1001 I Street, 14th floor  
Sacramento, CA 95814

Date 12/6/05

92520 Hwy 96  
Somes Bar, CA 95568  
T 800.552.6284  
F 530.469.3321  
[guest@marblemountainranch.com](mailto:guest@marblemountainranch.com)  
[www.marblemountainranch.com](http://www.marblemountainranch.com)

Dear Ms Mrowka, 5/05/05

Per our phone conversation yesterday, I examined the list of CEQA exemptions and it appears to me that we exactly match the section 15328 exemption for small hydro projects at existing facilities.

We have a pre-1914 water diversion on Stanshaw Creek that provides our domestic and agricultural water. The permit application we have on file for hydro-generation on this pre-existing system (160 years) meets all the requirements for a CEQA exemption in section 15328.

In the course of processing this existing application, we have had some protests from Cal Fish and Game, and from NOAA. It should be noted that we are in the process of mitigating these protests via a CDFG funded grant to improve the water transport capabilities of the existing canal and to return hydro-plant effluent to the mouth of Stanshaw creek above the anadromous section of the Creek. The Return of effluent will mitigate the de-watering of Summer time salmonid refugia at the mouth of Stanshaw.

Given the CEQA exemption match to section 15328, I request a removal of your demand for a Memorandum of Understanding, Environmental Document, and Water Availability Analysis in your letter of Nov 9 2005.

Also, given the essence of this exemption and the ongoing mitigation efforts of Marble Mountain Ranch and partnering government agencies, I am requesting a removal of our hydro-generation application. The existence of the current diversion with pre-1914 status and with 1911 Presidential proclamation along with mitigated protests for the diversion make the hydro-generation application redundant and unnecessary by my analysis.

# MARBLE MOUNTAIN RANCH

Thank you for your interest and attention to this matter.

Doug Cole

92520 Hwy 96  
Somes Bar, CA 95568  
T 800.552.6284  
F 530.469.3321  
[guest@marblemountainranch.com](mailto:guest@marblemountainranch.com)  
[www.marblemountainranch.com](http://www.marblemountainranch.com)

**15328. SMALL HYDROELECTRIC PROJECTS AT EXISTING FACILITIES**

Class 28 consists of the installation of hydroelectric generating facilities in connection with existing dams, canals, and pipelines where:

*Association of Environmental Professionals 2010 CEQA Guidelines*

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- (a) The capacity of the generating facilities is 5 megawatts or less;
- (b) Operation of the generating facilities will not change the flow regime in the affected stream, canal, or pipeline including but not limited to:
  - (1) Rate and volume of flow;
  - (2) Temperature;
  - (3) Amounts of dissolved oxygen to a degree that could adversely affect aquatic life; and
  - (4) Timing of release.
- (c) New power lines to connect the generating facilities to existing power lines will not exceed one mile in length if located on a new right of way and will not be located adjacent to a wild or scenic river;
- (d) Repair or reconstruction of the diversion structure will not raise the normal maximum surface elevation of the impoundment;
- (e) There will be no significant upstream or downstream passage of fish affected by the project;
- (f) The discharge from the power house will not be located more than 300 feet from the toe of the diversion structure;
- (g) The project will not cause violations of applicable state or federal water quality standards;
- (h) The project will not entail any construction on or alteration of a site included in or eligible for inclusion in the National Register of Historic Places; and
- (i) Construction will not occur in the vicinity of any endangered, rare, or threatened species.

**Note:** Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

**From:** Doug Cole <guestranch@pcweb.net>  
**To:** Kathy Mrowka <KMROWKA@waterboards.ca.gov>  
**Date:** 12/6/2005 9:13:38 AM  
**Subject:** Re:

Hi Katherine, I am attaching several documents for your information: Our current CDFG grant application to improve our diversion, a copy of our letter to M. Tauzer at NOAA, and a response to your letter dated Nov 9 2005 requesting a Memorandum of Understanding and environmental reports.

In sum, I am requesting exemption by CEQA code section 15328 and a removal of our application for hydrogeneration. The application appears redundant, given the ongoing and historical nature of the diversion and accompanying hydrogeneration and given the improvements to be made to the diversion as mitigations of CDFG and NOAA protests.

I look forward to your response,

Doug Cole

## APPENDIX A

### Proposal Application Form

#### Section 1: Summary Information

1. Applicant name: Mid Klamath Watershed Council

2. Contact person: Will Harling

3. Address: Box 840

4. City: Somes Bar

5. State: CA

6. ZIP: 95568

7. Telephone number: (530) 469-3216

8. FAX number: (530) 469-3372

9. Email address: wharling@sisqtel.net

10. Type: Public Agency  Nonprofit Organization  Private Enterprise  Indian Tribe

11. OSBCR Certified Small Business?

If yes, specify the industry group and Small Business Reference Number:

12. Past contractor?

13. Federal taxpayer ID: 20-1501256

14. Project type: Water Conservation

15. Project title: 2004 Stanshaw Creek Water Conservation Project - Phase I

16. Amount requested:

17. Total project cost:

18. Salmonid species benefited: Chinook  Coho  Steelhead  Cutthroat

19. Project summary: This project will pipe return water diverted from Stanshaw Creek to Marble Mountain Ranch for power generation back to Stanshaw Creek. Currently as much as 3 cfs is diverted via ditch out of the Stanshaw Creek basin into Irving Creek.

20. Stream: Stanshaw Creek

21. Tributary to: Klamath River

22. Major drainage system: Klamath River

23. County(ies): Siskiyou

24. Within Coastal Zone?  Within Trinity River basin?  Within Klamath River basin?

#### Section 2: Location Information

1. Township, Range, Section: T13.R6E Sec 33

2. Latitude, Longitude (in decimal degrees): 41.30.00 N, 123.30.00 W

3. Location description: Project will install a 12" return flow pipe from the hydroelectric plant on Marble Mountain Ranch to the

upstream inlet of the Stanshaw Creek Highway 96 culvert (3200 ft) (see attached map and drawing). Project is located 7.5 miles north of Somes Bar, CA, along Hwy 96. Project is approx. 1800 feet above confluence of Stanshaw Creek with the Klamath River.

4. Directions:

FROM YREKA go North on Highway 263 to the junction with Highway 96, then proceed South-West 63 miles to Happy Camp and continue another 30 miles to the ranch. Marble Mountain Ranch (MMR) is on the left side of the road up a ramped driveway. Driving time is about 2 hours from Yreka.

FROM REDDING proceed West on highway 299 for 109 miles to Willow Creek. Take highway 96 North 47 miles to Somes Bar, then continue North 7 1/2 miles to MMR on your right. Driving time is about 3 hours from Redding.

FROM EUREKA go North on highway 101 and proceed East on highway 299 for 50 miles to Willow Creek. Take highway 96 North 47 miles to Somes Bar and proceed North 7 1/2 miles to MMR on your right. Driving time is about 2 hours from Eureka.

Doug and Heidi Cole live in the big white house on the left as you enter the ranch. Ph #530-469-3322.

**Section 3: Watershed Information**

1. Major Drainage Name: Klamath River
2. Watershed Name: Stanshaw Creek
3. Watershed area: Stanshaw Creek
4. Watershed area included in this proposal: Lower portion of Stanshaw Creek Watershed
5. Land use statement: Private lands: Ditch and pipe 580 ft from hydro plant across MMR property to inboard ditch on HWY 96. 2060 ft along Highway 96 inboard ditch, and 460 ft across level fill to top of Stanshaw Creek culvert above HWY 96 (all Cal Trans right of way).
6. Project area ownership:     % private: 19     % state: 81     % federal: 0
7. Project area with landowners supportive of proposal: 100%
8. Watershed length of blue line streams: NA
9. Length of blue line streams affected by proposal: 0.5 mi.
10. Salmonids present: Coho (*Oncorhynchus kisutch*), Steelhead (*Oncorhynchus mykiss*), Chinook (*Oncorhynchus tshawytscha*)
11. Source(s) of above information: USFS Orleans and Happy Camp RD Staff, Karuk Tribe Fisheries Department
12. Salmonids historically present: same
13. Source(s) of above information: USFS Orleans and Happy Camp RD Staff, Karuk Tribe Fisheries Department
14. Limiting factors to salmonids: Stream Flow, Connectivity, Thermal Refugia
15. Source(s) of above information: USFS Orleans and Happy Camp RD Staff, Karuk Tribe Fisheries Department

**Section 4: Project Objectives**

1. Background and Need for project: Currently, there is an interbasin transfer via a ditch carrying 1.5 to 3.0 cfs from Stanshaw Creek to Irving Creek, located 7.5 miles north of Soms Bar on the Klamath River. This diversion is listed in the DFG Coho Recovery Plan for the state as a high priority for restoration. Past conflict over flows, thermal refugia, and connectivity in Stanshaw Creek have highlighted the need to increase instream flows, particularly in the anadromous section below the Hwy 96 culvert. Since 2003 landowners, agency, and tribal personnel have been working together to find a solution that provides for salmonid habitat needs, without unduly impacting the Marble Mountain Ranch. All stakeholders concur that returning Stanshaw Creek flows above the Hwy 96 culvert is the first step to improve anadromous habitat there. Acting on this, the Karuk Tribe, NRCS and MKWC combined resources over the summer to conduct flow monitoring and engineer the return flow. There is an opportunity to capitalize on an existing development in the Cal Trans right of way that must be used in the return of Stanshaw flows. Siskiyou Telephone is laying fiber optic line sometime after April 2006, and is burying the line deep enough that the return pipe could be laid on top, thus saving the trouble of re-digging the ground and risking damage to the fiber optic line. Coordinating with the contract to lay both lines at once will greatly reduce the cost of project. Funds are needed to purchase pipe, and to cover installation fees above what it costs the contractor to install the fiber optic.
2. Known limiting factors addressed by project: Thermal Refugia, Juvenile Salmonid Habitat, Connectivity, Spawning Habitat
3. Limiting factor remediation: Increasing flows in Stanshaw Creek, particularly in the late summer months, will increase the amount of quality cold water refugial habitat. Whereas Irving Creek is channelized at its confluence with the Klamath River, Stanshaw Creek empties and ponds into a flood scoured side channel of the Klamath River. This pond is a classic example of juvenile coho habitat: shaded and lined with overhanging vegetation and coarse woody debris. Annual summer surveys by the Karuk Tribe Fisheries Department show 500 or more juvenile coho utilizing this habitat on a good year. Surveys show intermittent use of the creek above this pool to the barrier at the Hwy 96 culvert downspout. With higher flows, this habitat should be more utilized.

Higher flows will also help maintain connectivity to the mainstem Klamath. Tribal fisheries technicians have observed juvenile coho migrating up small creeks to escape warm mainstem temperatures (Soto 2004). Large numbers of juveniles in this pool indicate that migration from the Klamath into this refugial habitat is occurring. Higher flows will also expand the availability and quality of spawning habitat. Cal Trans has identified this fish passage barrier and has plans to someday upgrade the culvert or make a bridge and restore flat spawning habitat under the Hwy 96 fill and upstream.

4. **Additional objectives:** This project will return diverted water to Stanshaw Creek and end the interbasin transfer to Irving Creek. It will bring a diverse group of stakeholders, tribes and agencies together for planning and implementation. These include all effected landowners, California Department of Fish and Game, Karuk Tribe of California, Natural Resources Conservation Service, NOAA Fisheries, Mid Klamath Watershed Council, US Forest Service, State Water Resources Control Board, and the Klamath Forest Alliance. By forging a working relationship on Phase I of this project, chances of reaching consensus on Phase II (screening the inlet to the MMR water sytem, piping 4500 feet of ditch to the hydro plant, decreasing electrical demands through increasing power system efficiency) will be increased.

### Section 5: Project Tasks and Results

1. **Detailed Project Tasks:** Receive grant (March, 2006). Coordinate NEPA, and rider to Siskiyou Telephone Company's encroachment permit with CalTrans (April, 2006). Purchase materials (April 2006). Coordinate installation with Siskiyou Telephone and their contractor, agencies, tribes and landowners (May - July, 2006). Monitor project installation through before and after photos from landmarked photopoints (May - August, 2006). Write progress reports ( May - August, 2006). Write final report to DFG (February, 2007).
2. **Time frame:** March 1, 2006 to February 28, 2007.
3. **DFG acceptable protocols used in project development and completion:**
  - DFG Restoration Manual  
List:
  - DFG Monitoring Protocols  
List:
  - Fish, Farms and Forestry Coalition Draft Protocols  
List:
  - PWA Road Assessment
  - Star Worksheet Road Assessment
  - V-Star residual Pool Volume
  - Juvenile summer abundance estimation
  - Out-migrant trapping and efficiency
  - California Content Standards
  - National Science Content Standards
4. **Other protocols:**
5. **Deliverables:** This project will return 1.5 - 3.0 cfs continuous flow to Stanshaw Creek above the Hwy 96 culvert.
6. **Expected Quantitative Results:**
  - a. **Stream length treated/assessed/made more accessible (distance in feet):** 1800 ft.
  - b. **Instream habitat structures to be installed (number):**
  - c. **Fencing length to be installed/repared (distance in feet):**
  - d. **Road length treated/assessed (distance in miles):**
  - e. **Stream crossings treated (number):**
  - f. **Sediment prevented from entering the stream (volume in cubic yards):**
  - g. **Trees planted (number):**
  - h. **Area planted/preserved/assessed (area in acres):**
  - i. **Public meetings (number):**
  - j. **Public meeting attendees (number):**
  - k. **Students trained (number):**
  - l. **Juvenile fish produced:      released:**
7. **Other products and results:** Collaboration among a diverse group of stakeholders.



8. Applicant's qualifications and experience: The Mid Klamath Watershed Council has been coordinating restoration activities in the Mid Klamath Subbasin since 2001. Including the work of or subsidiary, the Orleans/Somes Bar Fire Safe Council, we have received over \$1,000,000 to plan and implement watershed education and restoration projects, including water quality and streamflow monitoring, thermal refugia enhancement, hazard fuels reduction, riparian planting, noxious weed removal, community education, a quarterly newsletter, and more. We recently received our non-profit status, which has allowed us to hire an office manager/accountant, and increased our ability to handle more project work.

9. Previously completed projects and outcomes under grant program: We have received one organizational support grant from the DFG, which became active in September, 2004. Our first progress report was submitted in January, 2005.

**Section 6: Landowners, Access and Permits**

1. Landowners granting access for project (Please attach access agreements): Doug and Heidi Cole, owners of Marble Mountain Ranch.

2. Permits: NEPA

3. Lead CEQA agency:

4. Required mitigation?

**Section 7: Project Budget**

1. Summary Project Costs (Please attach detailed budget):

Sources of Funds	Cash	In-kind (if applicable)	Total
Fisheries Restoration Grant Program			
Other State Agencies <u>Name(s) and amount(s) of each:</u>			
Federal <u>Name(s) and amount(s) of each:</u>			
Applicant			
Other Sources <u>Name(s) and amount(s) of each:</u>			
Total			

2. Standardized Costs:

3. Budget justification:

4. Administrative Overhead:

**Section 8: Supplemental or Specialized Information**

In the following order, please attach the following required items, as appropriate to the project type:

- 1. Project budget according to the sample in the Solicitation. See examples and instructions on pages B10-B14. (ALL)
- 2. Plan view diagram. See example on page B9.  
(CC, CF, FL, HB, HI, HR, HS, HU, MO, PM, SC, TW, WC, WD)
- 3. Project location topo map, 7.5 minute. See example on page B8.

- (CC, CF, FL, HA, HB, HI, HR, HS, HU, MD, MO, PM, RE, SC, TE, TW, WC, WD, WP)
4. Watershed map. See Section III. (HU, MD, MO, OR, PI, PL, WP)
5. Landowner access agreements. See examples on pages B2-B7.  
(All projects with on-the-ground work)
6. Project 10-year maintenance agreement. See examples on pages B3-B5. (HR, HU)
7. Written eligibility certification from CDF. See Section III. (CF)
8. Evaluation plan. (see Section III - ED, TE). Quality Assessment/Quality Control Plan (see Section III - MD, MO).
9. Land acquisition/easement information. See page 7, Section III. (HA)
10. Water purchase information. See pages 9-10, Section III. (WP)
11. Status report. See Section III. (OR, PI)
12. 5-year management plan (new projects only). See page 13-14, Section III. (RE)
13. Environmental project questionnaire. See form on pages B15-17.  
(CC, CF, FL, HA, HB, HI, HR, HS, HU, MD, MO, PM, RE, SC, TW, WC, WD, WP)
14. Project follows guidelines in the California Coho Salmon Recovery Strategy (RE)  
(Coho related projects **must** follow guidelines outlined in appendices H or I, view at [http://www.dfg.ca.gov/nafwb/pubs/2003/CohoRecovery/RecoveryStrategy\\_20031105.pdf](http://www.dfg.ca.gov/nafwb/pubs/2003/CohoRecovery/RecoveryStrategy_20031105.pdf))
- 15 Drug Free Workplace, Std 21 (Appendix B)
16. Non-Discrimination, Std 19 (Appendix B)
17. Payee Data Record, Std 204 (Appendix B)

#### Supplemental Information Checklist by Project Type

(Please refer to the item numbers above)

Project Type	Item Number	Project Type	Item Number
AC	1	OR	1, 4, 5, 11, 15, 16, 17
CC	1, 2, 3, 5, 13, 15, 16, 17	PI	1, 4, 5, 11, 15, 16, 17
CF	1, 2, 3, 5, 7, 13, 15, 16, 17	PL	1, 4, 5, 15, 16, 17
ED	1, 5, 8, 15, 16, 17	PM	1, 2, 3, 5, 13, 15, 16, 17
FL	1, 2, 3, 5, 13, 15, 16, 17	RE	1, 3, 5, 12, 13, 14, 15, 16, 17
HA	1, 3, 5, 9, 13, 15, 16, 17	SC	1, 2, 3, 5, 13, 15, 16, 17
HB	1, 2, 3, 5, 13, 15, 16, 17	TE	1, 3, 5, 8, 15, 16, 17
HI	1, 2, 3, 5, 13, 15, 16, 17	TW	1, 2, 3, 5, 13, 15, 16, 17
HR	1, 2, 3, 5, 6, 13, 15, 16, 17	WC	1, 2, 3, 5, 13, 15, 16, 17
HS	1, 2, 3, 5, 13, 15, 16, 17	WD	1, 2, 3, 5, 13, 15, 16, 17
HU	1, 2, 3, 4, 5, 6, 13, 15, 16, 17	WP	1, 3, 4, 5, 10, 13, 15, 16, 17
MD	1, 3, 4, 5, 13, 15, 16, 17	OR	1, 4, 5, 11, 15, 16, 17
MO	1, 2, 3, 4, 5, 13, 15, 16, 17	PI	1, 4, 5, 11, 15, 16, 17

INTERIM BINDER, LAND DESCRIPTION

The land described herein is situated in the State of California, County of Siskiyou, UNINCORPORATED AREA, and is described as:

## PARCEL I

Lot Five, the Southwest quarter of the Northwest quarter of the Northeast quarter, the West half of the Southeast quarter of the Northwest quarter of the Northeast quarter, the Northeast quarter of the Southeast quarter of the Northwest quarter of the Northeast quarter, the Northwest quarter of the Northwest quarter of the Southwest quarter of the Northeast quarter, the East half of the Northwest quarter of the Southwest quarter of the Northeast quarter and the West half of the Northeast quarter of the Southwest quarter of the Northeast quarter; All being in Section 4, Township 12 North, Range 6 East, Humboldt Meridian, California.

EXCEPTING FROM the above described property so much thereof as was conveyed to the State of California by deed dated January 12, 1966 and recorded March 10, 1966 in Volume 526 of Official Records, Page 891.

TOGETHER WITH, however, all that portion of the highway as conveyed to the State of California by deed recorded in Volume 526 of Official Records, Page 891, described as:

- a. All that portion of the existing State Highway in the North half of the Northeast quarter of Section 4, Township 12 North, Range 6 East, Humboldt Base and Meridian, lying Westerly of the courses described as having a bearing and length of South 21° 25' 24" East, 325.23 feet and South 68° 52' 45" East, 206.40 feet in the deed to the State of California recorded March 10, 1966 in Book 526 of Official Records, Page 891, Siskiyou County Records.
- b. All that portion of the existing State Highway in the North half of the Northeast quarter of Section 4, Township 12 North, Range 6 East, Humboldt Base and Meridian, and the South half of the Southeast quarter of Section 33, Township 13 North, Range 6 East, Humboldt Base and Meridian, lying Easterly of and terminating at the following described lines:

Line 1

The course described as having a bearing and length of North 29° 54' 45" West, 397 feet, more or less, in the exception in the deed to the State of California recorded March 10, 1966 in Book 526 of Official Records, Page 891, Siskiyou County Records.

Line 2

Commencing at a point on the North line of said Section 4, from which the corner common to Sections 3 and 4, Township 12 North, Range 6 East, Humboldt Base and Meridian, and Sections 33 and 34, Township 13 North, Range 6 East, Humboldt Base and Meridian, bears South  $88^{\circ} 51' 44''$  East, 1769.19 feet, said point also being Engineer's Station "A" 479+77.35 P.O.C. of the Department of Public Works' 1964 Survey between Somes Bar and T1 Creek (State Highway 01-Sis-96); thence, from a tangent that bears North  $47^{\circ} 20' 27''$  West along a curve to the left having a radius of 1000 feet, through an angle of  $7^{\circ} 37' 11''$ , a distance of 132.99 feet; thence, North  $35^{\circ} 02' 22''$  East, 66.00 feet to the TRUE POINT OF BEGINNING; thence North  $54^{\circ} 57' 38''$  West, 152.00 feet.

## PARCEL II

All that portion of the Southwest quarter of the Southeast quarter of Section 33, Township 13 North, Range 6 East, H.M., described as:

BEGINNING at the South one-quarter corner of said section; thence East 330 feet to the True Point of Beginning; thence East 330 feet along the South line of said section to the East boundary of the Lue Hayes property; thence North 330 feet along the East line of said Hayes property; thence West 330 feet; thence South 330 feet to the True Point of Beginning, and particularly described as the South half of the East half of Southwest quarter of Southwest quarter of Southeast quarter of Section 33, Township 13 North, Range 6 East, H.M.

EXCEPTING THEREFROM that portion conveyed to the State of California for Highway purposes by the Deed recorded December 15, 1965, in Volume 524, Page 98 of Official Records.

A.P.No.: (85-00) 26-290-180; 33-080-050, 070

# State Water Resources Control Board



## Division of Water Rights

1001 I Street, 14<sup>th</sup> Floor ♦ Sacramento, California 95814 ♦ 916.341.5300  
 Mailing Address: P.O. Box 2000 ♦ Sacramento, California 95812-2000  
 FAX: 916.341.5400 ♦ [www.waterrights.ca.gov](http://www.waterrights.ca.gov)

Alan C. Lloyd, Ph.D.  
 Agency Secretary

Arnold Schwarzenegger  
 Governor

NOV 09 2005

Doug Cole, et al.  
 Marble Mountain Ranch  
 92520 Highway 96  
 Somes Bar, CA 95568

Dear Mr. Cole:

### MEMORANDUM OF UNDERSTANDING FOR PREPARATION OF ENVIRONMENTAL DOCUMENT AND WATER AVAILABILITY ANALYSIS

Your water right application(s) has/have been reviewed to determine what steps you will need to take before the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) can continue processing your application(s). The required steps are discussed below.

#### California Environmental Quality Act (CEQA) Documents

CEQA requires that the State Water Board, as Lead Agency, directly or under contract, prepare the appropriate environmental documentation prior to taking any discretionary action, such as approving a water right application. You are responsible for all costs related to the environmental evaluation and preparation of CEQA documents. This includes the related fishery impact studies discussed below. You are required to enter into a Memorandum of Understanding (MOU) that defines your role and the roles of the State Water Board and your environmental consultant(s) for preparing the appropriate CEQA documents. A copy of the MOU template can be obtained at [www.waterrights.ca.gov/forms](http://www.waterrights.ca.gov/forms) (click on *Memorandum of Understanding for Preparation of Environmental Documents*). If you are unable to access the Division's web page, a copy can be obtained by contacting the Division at the above address or telephone number.

If you think that CEQA does not apply to this project, please provide written justification and documentation to support your position. Also note that the final determination regarding the applicability of CEQA to the appropriate water right process is the responsibility of the State Water Board as Lead Agency.

*Chris exemption*  
*Kdm*

Doug Cole, et al.

- 2 -

### **Potential Cumulative Impacts on Threatened Fish**

National Marine Fisheries Service (NOAA Fisheries Service) listed the Central California Coast coho salmon (*Oncorhynchus kisutch*) and the Central California Coast steelhead (*O. mykiss*) as threatened under the federal Endangered Species Act. Subsequently, NOAA Fisheries Service and the California Department of Fish and Game (DFG) developed a method to assess potential site-specific and cumulative impacts of proposed water projects on anadromous fishery resources in coastal watersheds. This assessment method is described in a document titled *Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams (Draft)* (Guidelines), prepared by NOAA Fisheries Service and DFG and dated June 17, 2002. A copy of this document can be obtained at [www.waterrights.ca.gov/coastal\\_streams/index.html](http://www.waterrights.ca.gov/coastal_streams/index.html).

### **Request for Information**

The applicant is responsible for completing most technical activities associated with processing a water right application, including resolution of valid protests filed against the application. These technical activities may require that you hire qualified engineering and environmental consultants. They will analyze the project watershed and, if necessary, recommend specific project modifications or actions (mitigation measures) to: 1) prevent your project from contributing to significant cumulative impacts on anadromous fishery resources in the watershed; 2) prevent your project from causing or contributing to other significant environmental impacts; and 3) resolve valid protests against the project. You or your environmental consultant(s) must also prepare the appropriate CEQA documents. A list of environmental and engineering consultants who are familiar with the preparation of water rights analyses and CEQA documents can be obtained at [www.waterrights.ca.gov/wrinfo/contacts.htm](http://www.waterrights.ca.gov/wrinfo/contacts.htm).

As part of this process, you must determine whether the total diversion demand in the project watershed, including your proposed diversion(s), may cause a significant adverse impact to anadromous fishery resources. Documentation to support a finding that there is water available for appropriation for this project must also be provided according to California Water Code section 1375 (d). To meet these requirements, the applicant must prepare and submit to the Division a Water Availability Analysis/Cumulative Flow Impairment Index Report (WAA/CFII Report) for review and acceptance. An example of how the WAA/CFII Report should be formatted can be viewed at [www.waterrights.ca.gov/forms](http://www.waterrights.ca.gov/forms). The WAA/CFII Report's results may require additional site-specific hydrological and biological surveys/analyses in consultation with NOAA Fisheries Service and DFG. Please consult the Guidelines for further information.

In view of the above discussion, please advise the Division in writing within 30 days of the date of this letter if you wish to continue pursuing a water right permit for your project. Your response should also acknowledge that you agree to retain the appropriate engineering and environmental consultants to prepare the WAA/CFII Report and appropriate CEQA documents. If you do not respond in writing within the time allowed, we will assume that you no longer wish

Doug Cole, et al.

- 3 -

to proceed with your project. The Division may then cancel your application(s) pursuant to Water Code section 1276. If you have a pre-existing project that requires a water right permit and your application is cancelled, you must remove your project or you will be subject to enforcement action. The Division may assess administrative civil liability of up to \$500 per day pursuant to Water Code section 1052. In addition, the Division may issue a cease and desist order in response to an unauthorized diversion or threatened unauthorized diversion pursuant to Water Code section 1831. A person who violates a cease and desist order is liable for civil liability of up to \$1,000 per day of violation. (Wat. Code, § 1845.)

If you intend to continue processing your application(s), you must submit to the Division, in writing, the following items within 180 days from the date of this letter: 1) identification of the consultants or persons that will prepare the WAA/CFII Report and a description of their expertise; 2) identification of the consultants or persons that will prepare a draft of the CEQA documents and a description of their expertise; and 3) a copy of the MOU fully completed and signed, except for the Division Chief's signature and designation of the Division's MOU manager. (The Division's MOU manager will be the Division's day-to-day representative for administration of the MOU.) After the MOU is received and approved, the Division will return a copy of the executed MOU to you naming the Division's MOU manager. The MOU execution date will be the date the MOU is signed by the Division Chief.

Please submit the requested information by the dates specified above. If you do not submit the requested information within the time allowed, your application may be canceled without further notice.

**If You Have any Questions**

Questions concerning this letter may be directed to Katherine Mrowka at the above address or electronically to [Kmrowka@waterboards.ca.gov](mailto:Kmrowka@waterboards.ca.gov). She may also be contacted by telephone at (916) 341-5363.

Sincerely,

STEVEN HERRERA, Chief  
Water Right Permitting Section

Dsheaders/Sherrera/VAW;DHeinrich: jmtipps 03.08.05  
U:\PERDRV\DSheaders\MOU letter on letterhead Mar 8 final for Donna.doc


STATUS REPORT: Douglas T. Cole (A029449)

This is a complicated project which has been simmering for a long time, but looks like it could be resolved in the near future. Cole has a pre-1914 right for a limited flow for consumptive use, and filed this application for hydro power. Right now the water he diverts does not return to the creek from which it was diverted, but flows to another drainage adjacent to his property. This causes problems, especially for steelhead habitat farther down in the stream. DFG has protested the project.

Recent developments indicate a possible solution: a cable company is digging a ditch at the lower end of Cole's property, and is willing to allow him to install a pipe to carry water from his hydro diversion back to the stream, just above the steelhead habitat. Jane Vorpapel of DFG is OK on this, because it protects the habitat. She also wants a minimum bypass flow at all times, and Cole seems willing to accommodate this. In my discussions with him, I indicated that he would probably have to build a bypass structure at the head of his diversion canal to provide a minimum bypass, and then only divert the permitted amount.

A downstream landowner also wants to develop some hydropower, under claim of riparian right, and so wants more water left in the stream. However, Chuck Rich informs me that riparian users for hydropower are only allowed to use the natural fall (head) on their property; they cannot go upstream beyond their property boundary to gain additional head. Therefore, this issue should be a nonstarter.

Cole has been working with a negotiator, Will Harling (see file), from the MidKlamath Watershed Council, to work through these issues. He wants some sort of OK from us in the near future so they can install the pipe while the ditch is open. This should be a priority action, in my opinion, so we can finally get this done. See letters and notes in the file.



08/09/05





DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>  
NORTHERN CALIFORNIA-NORTH COAST REGION  
601 Locust Street  
Redding, CA 96001  
(530) 225-2300

STATE WATER RESOURCES  
CONTROL BOARD

JES 

2005 JUL 12 PM 4:07

July 5, 2005

DIV OF WATER RIGHTS  
SACRAMENTO

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

Dear Mr. Cole:

The Department of Fish and Game has received your letter which details your proposals to mitigate impacts to coho salmon from your current unauthorized diversion in Stanshaw Creek. As you know the Department protested your water right application on March 17, 2000. We are also preparing comments and conditions for your small domestic use application which has come up recently for renewal.

The Department's primary concern regarding your diversion is the protection of anadromous fish habitat in the approximately 0.25 mile reach of Stanshaw Creek from the Highway 96 crossing to the stream's confluence with the Klamath River.

Your letter proposes two phases of mitigation. Phase I involves piping effluent from hydroelectric generation back to Stanshaw Creek above the Stanshaw Creek/Highway 96 culvert. This mitigation method was discussed on various field trips to your ranch during the protest of the water right application. The Department agrees if you pipe this water, which is currently being discharged to Irving Creek, back to Stanshaw Creek, above the Highway 96 culvert, then coho habitat below the culvert should be maintained in this portion of Stanshaw Creek.

Specific flow requirements will be discussed in the future, however, the Department determined in a previous field review that a flow of 2.4 cubic feet per second in Stanshaw Creek below the culvert should maintain suitable habitat for coho salmon.

Phase II in your letter proposes:

- Maintaining current minimum flows past the point of diversion for resident Stanshaw Creek trout.

Mr. Doug Cole  
July 5, 2005  
Page Two

- Installing a half-round culvert in the historic canal line to prevent berm failures, overtopping in high water events and to improve efficiency of water transportation.
- Installing solar power generation systems to compliment hydroelectric generation.

Maintaining current commitments for minimum flows past your "Point of Diversion" is a requirement of your lake or streambed alteration agreement and should not be considered part of Phase II implementation.

The Department supports the concept of your proposals. We look forward to working with you in the future to resolve our protests to your water right applications. If you have questions or comments regarding this letter please contact Staff Environmental Scientist Jane Vorpapel at (530) 225-2124.

Sincerely,



**DONALD B. KOCH**  
Regional Manager

cc: ✓ Mr. Jim Sutton  
Division of Water Rights  
P.O. Box 2000  
Sacramento, CA 95814

Mr. Will Harling  
Mid Klamath Watershed  
P.O. Box 764  
Somes Bar, CA 95568

Ms. Jane Vorpapel  
Department of Fish and Game  
601 Locust Street  
Redding, CA 96001

Dear Sirs, 5/05/05

It is my hope to update you on Marble Mountain Ranch (MMR) plans and intentions regarding Stanshaw Creek water diversion and associated hydroelectric generation. In association with Will Harling of the Mid Klamath Watershed Council, we hope to address and mitigate the concerns of federal, state, and tribal agencies, as well as other interested parties, while simultaneously preserving the viability of Marble Mountain Ranch as an entity.

We understand the concerns about the effect of the MMR diversion on refugial salmonid habitat from the mouth of Stanshaw Creek to the Highway 96 culvert during warm weather months, and secondly on habitat maintenance for resident trout and other riparian species in Stanshaw Creek from the upstream end of the Highway 96 culvert to the Point of Diversion (POD).

It is our intention to pursue a two phase improvement of the diversion and water transportation system at Marble Mountain Ranch that is described as follows:

#### STANSHAW CREEK WATER CONSERVATION PROJECT - PHASE I

Effluent from hydroelectric generation at MMR is currently discharged into Irving Creek near the southern boundary of MMR with State Highway easement property. We propose to redirect discharged water from the hydroelectric plant westward via an 8 inch Low-Pressure PVC Pipeline across the MMR property to Highway 96, then through a CalTrans easement downhill along Hwy 96 to the head of the Stanshaw Creek/Highway 96 culvert. This returned piped water will improve refugial salmonid habitat located between the mouth of Stanshaw Creek and the Stanshaw Creek/Highway 96 culvert.

This project is facilitated by the serendipitous timing of an excavation to install fiber optic cable along the Highway 96 portion of the return flow pipe's path. Preliminary discussions with Siskiyou Telephone, Henkels and McCoy (their contractor), and with CalTrans personnel have been positive and supportive of a concurrent placement of the return piping during the installation of the fiber optic cable. There is some urgency to finalizing the details of this project to be ready for implementation when the contractor is ready to work on this section of highway. Tentatively, it looks like this may occur in the Spring of 2006, but may be as early as the late Summer/early Fall 2005, depending on Siskiyou Telephone funding.

With the completion of Phase I return of hydroelectric generation effluent, the existing canal lines that transport effluent water across MMR toward Irving Creek will be maintained to carry domestic and ag water that will continue to be consumed by MMR activities. The current pond at MMR will be maintained for fire prevention, ag use, and recreational use by ranch guests. This portion of the canal must also be preserved so that during maintenance of new return piping, or in the event of a catastrophic failure of return piping, there is a secondary return route for diversion water back to the Klamath River. This is a "win-win" proposal that allows existing MMR power generation to

continue while mitigating impacts to the anadromous portion of Stanshaw Creek.

## PHASE II

Improving riparian habitat in the de-watered stretch of Stanshaw Creek between the POD and the Stanshaw Creek/Highway 96 culvert will be addressed by the following:

1. Maintaining current commitments to allow minimum flows to pass the POD for downstream migratory Stanshaw Creek trout.
2. Installing half-round culvert in the historic canal lines to prevent over-topping in high water events, to prevent berm failures during increasing crossings by local elk herds utilizing canal habitat, and to improve efficiency of water transportation. This step could also facilitate a need for less water diversion as efficiency of transport is improved. Half-round culverts are seen by MMR as a solution that preserves some of the existing habitat that the canals generate, and preserves the aesthetics of the historic canal line that are enjoyed by MMR guests hiking the historic route of diversion. Native basket weavers will also be able to continue gathering basket materials along the canal line.
3. Installation of solar power generation systems at MMR will compliment hydroelectric generation, and will mitigate the dependence of MMR on hydroelectric generation or fossil fuel consumption, while preserving the commercial viability of MMR. This step could ultimately also justify reducing diversion flows during sensitive warm weather months.

We are soliciting you for a letter in support of the concept for these proposals. We see a possibility for a solution that will immediately and directly address the points of contention over the MMR diversion and set a precedent for joint solution finding.

Sincerely,

Doug and Heidi Cole,  
Marble Mountain Ranch

Will Harling,  
Mid Klamath Watershed Council

continue while mitigating impacts to the anadromous portion of Stanshaw Creek.

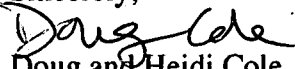
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We are soliciting you for a letter in support of the concept for these proposals. We see a possibility for a solution that will immediately and directly address the points of contention over the MMR diversion and set a precedent for joint solution finding.

Sincerely,



Doug and Heidi Cole,  
Marble Mountain Ranch

Will Harling,  
Mid Klamath Watershed Council

# 2003/04 PENDING APPLICATION ANNUAL FEE REVIEW

WR-5

APPLICATION NO.

A029449

REVIEW COMPLETED BY:

JESutton

DATE:

06/28/2004

OWNER Douglas T. Cole

Routing	
Person/Task	Initial & Date (Completed)
Reviewer (review complete)	JES 6/28/2004
Senior (approve review)	NA
SJW post on ledger and copy to Binder	SJW 7/9/04
Return original to	JES for inclusion in App. File

YES Was a public notice of the application issued?

If so, what date? 01/28/2000

YES Was the application "received" before July 1, 2003 (i.e. the date hand-written on the bottom right corner of the first page of the application)?

**IF ANY OF THE FIVE FOLLOWING CRITERIA ARE TRUE, AN ANNUAL FEE IS NEEDED**

YES Has the diversion of water, the construction of diversion works, or the clearing of land where the diverted water will be used or stored been initiated before a permit has been issued authorizing the diversion?

If you are uncertain whether or not there is an existing or "threatened" diversion call the applicant/agent and write a contact memo to the file (one phone call rule, see MPF for explanation). If you have no evidence (verbal, written, picture, etc) of a diversion or threatened diversion you must answer "NO" to this question.

If yes, provide the name & date of item that provides evidence of this.

Application

03/27/1989

date

NO Is the application on hold because the applicant has requested any delay in processing?

If yes, provide the name & date of file item that provides evidence of this.

date

NO Is the applicant the CEQA lead agency and has the applicant failed to adopt or certify a final environmental document (as required) for the project within 2 years after the application was noticed?

If yes, provide the name & date of file item that provides evidence of this.

date

NO Has the applicant not submitted supplemental information as required by the Division of Water Rights under WC 1275?

If yes, provide the name & date of the file item that provides evidence of this.

date

NO Is the permit signed by the Division Chief and ready for issuance but the applicant has not paid the fees required by Public Resources Code 10005, Fish and Game Code 711.4, or other law?

If yes, provide the name & date of file item that provides evidence of this.

date



**ANNUAL FEE REQUIRED**

**NOTE: Complete Page Two of this form even if NO annual fee is required. Enter the diversion information and initial the dialog boxes concerning diversion data and WRIMS.**

YES Does this application include hydropower as a use (more than just incidental)?

*to Cal: 01/01/2005*

ANNUAL FEE MAY BE MODIFIED - COMPLETE HYDROPOWER SUPPLEMENTAL WORKSHEET

*gtd attached*

APPLICATION NO. A00049

WR-5

## Fee Calculation Sheet

**Note:** The annual fee is based on the total annual diversion limitation proposed by the application. If the application does not identify a total annual diversion limitation the fee is based on any direct diversion (converted to acre-feet) combined with any annual storage proposed by the application. The charge is \$0.03 per acre-foot (\$100.00 minimum fee).

Date & description of file item from which diversion data below were derived.

Notice	
03/17/2000	date

I reviewed the file to see if there were any reductions in the diversion season, rate, and/or amount & any POD eliminations that were not noted in the working copy of the application. I made any necessary corrections to the working copy of the application & then applied the correct data below.

	Initials
--	----------

<b>Total Annual Diversion Limitation (if applicable)</b>	<b>2,168.10</b>	acre-feet (A)
--	-----------------	---------------

Direct Diversion Calcs.	POD 1	POD 2	POD 3	POD 4	POD 5	POD 6	POD 7	POD 8
Direct Diversion Rate <small>(fill in only one rate for each POD)</small>	3.00 cfs	0.00 cfs	0.00 cfs	0.00 cfs	0.00 cfs	0.00 cfs	0.00 cfs	0.00 cfs
	0.00 gpm	0.00 gpm	0.00 gpm	0.00 gpm	0.00 gpm	0.00 gpm	0.00 gpm	0.00 gpm
	0.00 gpd	0.00 gpd	0.00 gpd	0.00 gpd	0.00 gpd	0.00 gpd	0.00 gpd	0.00 gpd
Length of Season of Diversion	365 days	0 days	0 days	0 days	0 days	0 days	0 days	0 days
Direct Diversion Quantity(s)	2171.93 acre-ft	0.00 acre-ft	0.00 acre-ft	0.00 acre-ft	0.00 acre-ft	0.00 acre-ft	0.00 acre-ft	0.00 acre-ft
Direct Diversion Rate <small>(fill in only one rate for each POD)</small>	0.00 cfs	0.00 cfs	0.00 cfs	0.00 cfs	0.00 cfs	0.00 cfs	0.00 cfs	0.00 cfs
	0.00 gpm	0.00 gpm	0.00 gpm	0.00 gpm	0.00 gpm	0.00 gpm	0.00 gpm	0.00 gpm
	0.00 gpd	0.00 gpd	0.00 gpd	0.00 gpd	0.00 gpd	0.00 gpd	0.00 gpd	0.00 gpd
Length of Season of Diversion	0 days	0 days	0 days	0 days	0 days	0 days	0 days	0 days
Direct Diversion Quantity(s)	0.00 acre-ft	0.00 acre-ft	0.00 acre-ft	0.00 acre-ft	0.00 acre-ft	0.00 acre-ft	0.00 acre-ft	0.00 acre-ft
<b>Total Annual Direct Diversion Quantity (calculated)</b>			<b>2,171.93</b>		acre-feet (B)			
<b>Total Annual Direct Diversion Quantity Cap (if applicable)</b> <small>(if there is an annual direct diversion cap it will be used to calculate the annual fee)</small>			<b>0.00</b>		acre-feet (B*)			

Annual Storage Quantity	RES 1	RES 2	RES 3	RES 4	RES 5
Collection Season (mo/day to)	0.00 acre-ft	0.00 acre-ft	0.00 acre-ft	0.00 acre-ft	0.00 acre-ft
Collection Season (mo/day to)	0.00 acre-ft				
<b>* Total Annual Storage Quantity</b>		<b>0.00</b>		acre-feet (C)	

<b>Total Annual Diversion for Fee Calculation</b>	<b>2,168.10</b>	acre-feet [A or (B+C) or (B*+C)]
---	-----------------	----------------------------------

<b>Fee Calculation:</b>	2168.1 acre-feet	x	\$0.03/acre-foot =	<b>\$65.07</b>	
				<b>Minimum Annual Fee</b>	<b>\$100</b>

I have checked the above-listed and verified diversion data against the data in WRIMS. I have completed the WRIMS diversion data correction sheet and have routed it to Whalen to make any needed changes to WRIMS.

	Initials
--	----------

see correction note on purpose of use

<b>ANNUAL FEE FOR 2003-04</b>	<b>\$100.00</b>
-------------------------------	-----------------

## Additional Information for Hydropower Applications Only

Application

A029449

\$100!00 What is the filing fee or annual fee previously calculated for 2003-04?

If any of the following criteria apply to the hydropower application, then the previously calculated annual/filing fee will apply:

Was a petition to revise FAS or a petition for an assignment of a State filing submitted with the application?

Has the applicant not submitted supplemental information as required under Water Code section 1275?

### The previously calculated filing/annual fee will be modified as follows:

Projects subject to FERC licensing shall be charged 30% of the previously calculated filing fee or annual fee. Projects not subject to FERC are charged 50% of the previously calculated fee. In both cases the minimum fee is \$100.

Is the project subject to FERC licensing?

*Project not on grid, and is on private land.*

The modified filing/annual fee is: **\$50.00**

The minimum hydropower filing/annual fee is: **\$100.00**

The filing/annual fee for this hydropower application is:

✓ **\$100.00**

*SJD  
7/9/04*



**From:** "Jane Vorpagel" <JVorpage@dfg.ca.gov>  
**To:** <JSUTTON@waterrights.swrcb.ca.gov>  
**Date:** 11/17/04 1:57PM  
**Subject:** water

Hi Jim,

I got to thinking about the Cole diversion. I think we already recommended a bypass flow which would protect coho. I recall it was the amount we measured during one of our field trips. We wanted the bypass measured at the culvert at the Highway. If the flow is....??? at the culvert then he can divert. I think my notes Or that report, have the flow #. I just wanted to let you know in advance that we did come up with a number... he does not need to do a flow study.

thanks,

Jane

also can you tell me who at the Board I can ask.... What is the Feb median flow in Sugar Creek Trib to the Scott River. ? Ross Swenerton mentioned a few names but I don't recall them.

Thanks,

Jane

262 WRS (47-40-01)  
SURNAME/FILES



# State Water Resources Control Board

## Division of Water Rights

1001 I Street, 14<sup>th</sup> Floor • Sacramento, California 95814 • (916) 341-5377  
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000  
FAX (916) 341-5400 • Web Site Address: <http://www.waterrights.ca.gov>

Gray Davis  
Governor

Winston H. Hickox  
Secretary for  
Environmental  
Protection

In Reply Refer to:  
363:MC:262.0(47-40-01); A029449

**AUG 22 2002**

Klamath Forest Alliance  
c/o Law Offices of Donald B. Mooney  
129 C Street, Suite 2  
Davis, CA 95616

Dear Mr. Mooney:

### WATER RIGHTS COMPLAINT OF THE KLAMATH FOREST ALLIANCE AGAINST THE COLES REGARDING DIVERSIONS FROM STANSHAW CREEK IN SISKIYOU COUNTY

Staff of the Division of Water Rights (Division) has completed their review of your letter of June 24, 2002 regarding the subject complaint. You indicate in this letter that you and your client disagree with the conclusions reached by Complaint Unit staff, as expressed in their letter and Staff Report of Investigation dated May 23, 2002. After review of both the Staff Report of Investigation and your letter, I have concluded that further action with respect to your client's complaint is not warranted, and I have directed the Complaint Unit to close this complaint. The supporting rationale for this action is described below.

Unauthorized Diversion of Water – You contend that the Division previously determined that any pre-1914 appropriative right held by the Coles is limited to approximately 0.11 cubic feet per second (cfs). Regardless of past letters sent by the Division containing estimates of what could be diverted pursuant to a pre-1914 appropriative right claim, the Division has no adjudicatory authority to quantify such a claim. Only the courts can make this determination. The most recent evidence submitted by the Coles and their legal counsel indicates that diversion of water from Stanshaw Creek into their ditch, and the subsequent use of this water for irrigation and domestic purposes at the Marble Mountain Ranch, was initiated prior to 1914 using at least as much, if not more, water than is used today. All available evidence suggests that the diversion and use has been maintained in a diligent and continuous fashion ever since. Consequently, we believe that a court would find that the Coles have a valid claim of a pre-1914 appropriative right to divert water for the full irrigation and domestic uses currently maintained, including reasonable conveyance losses.

While the Cole's current diversion of water for power purposes is not technically covered by a permit, this diversion and use has been ongoing for almost 60 years. Diversions prior to a determination regarding issuance of a permit are very common, especially for long-standing diversions such as the Cole's. The State Water Resources Control Board (SWRCB) has discretion whether to take enforcement action against an unauthorized diversion of water. Upon reviewing a complaint, the SWRCB may decide not to take enforcement action, or to defer consideration of enforcement. The SWRCB may consider several factors when deciding whether to pursue enforcement. One factor the SWRCB weighs is the willingness of the water diverter to legitimize the diversion. The SWRCB may choose not to initiate enforcement against a person who files an application promptly upon notification of the complaint, and then

### California Environmental Protection Agency

SURNAME  
DWR 540

"The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web site at <http://www.swrcb.ca.gov>."

MC 8/19/02

CAR 8/19/02

Delaney 8/21/02

000590

Klamath Forest Alliance

2

AUG 22 2002

diligently pursues the application, complies with all application requirements and requests for information, and cooperates with SWRCB staff. While the Cole's application (A029449) has been pending for an extraordinarily long time, there is no indication in the application file that the Coles have not pursued approval of their application in a diligent fashion.

Potential Injury to Other Uses of Water - Another important factor in considering enforcement is the extent of injury caused by the water diversion. If a complaint investigation shows the unauthorized diversion is causing little or no injury to established right holders or to public trust values, the SWRCB may decide *not* to take enforcement action. The SWRCB may also consider the degree of hardship that enforcement action would impose on persons who rely on the diversion of water when it decides whether to take enforcement action in response to a complaint. Based on available evidence and rationale described in the Staff Report of Investigation, Complaint Unit staff concluded that there would be little potential for harm to other diverters or public trust resources if the Coles were allowed to divert water for power purposes, as long as a minimum bypass flow is maintained similar to that occurring during their investigation. You disagree with this conclusion, and make reference to the professional opinions of staff for the National Marine Fisheries Service, Department of Fish and Game, Karuk Tribe, and Humboldt State University. While we have received copies of these opinions, the evidence and logical rationale on which these opinions are based has not been submitted. Consequently, I believe the prima facie evidence utilized by Complaint Unit staff is more persuasive. Asking the Coles to terminate their diversion would also cause severe economic hardship on them without providing much if any benefit to the instream resources.

I do agree with you that the Cole's application has been pending for far too long. This application has been noticed and protests received. I doubt the parties will be able to resolve these protests amicably amongst themselves. The next steps in the process would be to complete an environmental review of the project pursuant to the California Environmental Quality Act (CEQA), and then proceed to protest resolution via either a field investigation or formal hearing. I have directed the Division's Environmental Section to give as much priority as possible to this application so that final resolution of the protests can be achieved as soon as feasible. I have also asked the Division's Application and Environmental units to send copies of all correspondence to you so that you will be kept apprised of the progress in this matter.

In the meantime, I expect the Coles to maintain a minimum bypass, as described in the Staff Report of Investigation. Failure to do so could result in a reevaluation of the need for enforcement action prior to a final determination of the Cole's request for a permit.

If there are any questions regarding this matter, please contact Charles Rich, Chief of the Division's Complaint Unit, at (916) 341-5377.

Sincerely,

ORIGINAL SIGNED BY

Edward C. Anton, Chief  
Division of Water Rights

cc: See next page.

Klamath Forest Alliance

3

AUG 22 2002

cc: Mr. Doug and Mrs. Heidi Cole  
c/o Jan Goldsmith  
Kronick, Moskovitz, Tiedemann & Girard  
400 Capitol Mall, 27th Floor  
Sacramento, CA 95814-3363

Mr. Doug and Mrs. Heidi Cole  
92250 Highway 96  
Somes Bar, CA 95568

Department of Fish and Game  
Environmental Services  
Attention Mr. Ron Presley and  
Jane Vorpapel  
601 Locust Street  
Redding, CA 96001

National Marine Fisheries Service  
Santa Rosa Field Office  
Attention Tim Broadman and  
Margaret Tauzer  
777 Sonoma Avenue, Room 325  
Santa Rosa, CA 95404

William M. Heitler, District Ranger  
U.S. Department of Agriculture  
Orleans Ranger District  
P.O. Drawer 410  
Orleans, CA 95556-0410

Mr. Jim De Pree  
Siskiyou County Planning Department  
P.O. Box 1085  
Courthouse Annex  
Yreka, CA 96097

Mr. Konrad Fisher  
3210 Klingle Road NW  
Washington, D.C. 20008

Karuk Tribe of California  
Department of Natural Resources  
Attention Mr. Toz Soto  
P.O. Box 282  
Orleans, CA 95556

bcc: Larry Attaway, Ross Swenerton  
MContreras\lfischer 8/16/02  
U:\Comdrv\MContreras\KFA v Cole appeal rejection letter

000592

# State Water Resources Control Board

## Division of Water Rights

1001 I Street, 14<sup>th</sup> Floor • Sacramento, California 95814 • (916) 341-5377  
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000  
FAX (916) 341-5400 • Web Site Address: <http://www.waterrights.ca.gov>



**Winston H. Hickox**  
Secretary for  
Environmental  
Protection

**AUG 22 2002**

In Reply Refer to:  
363:MC:262.0(47-40-01); A029449

Klamath Forest Alliance  
c/o Law Offices of Donald B. Mooney  
129 C Street, Suite 2  
Davis, CA 95616

Dear Mr. Mooney:

### WATER RIGHTS COMPLAINT OF THE KLAMATH FOREST ALLIANCE AGAINST THE COLES REGARDING DIVERSIONS FROM STANSHAW CREEK IN SISKIYOU COUNTY

Staff of the Division of Water Rights (Division) has completed their review of your letter of June 24, 2002 regarding the subject complaint. You indicate in this letter that you and your client disagree with the conclusions reached by Complaint Unit staff, as expressed in their letter and Staff Report of Investigation dated May 23, 2002. After review of both the Staff Report of Investigation and your letter, I have concluded that further action with respect to your client's complaint is not warranted, and I have directed the Complaint Unit to close this complaint. The supporting rationale for this action is described below.

Unauthorized Diversion of Water – You contend that the Division previously determined that any pre-1914 appropriative right held by the Coles is limited to approximately 0.11 cubic feet per second (cfs). Regardless of past letters sent by the Division containing estimates of what could be diverted pursuant to a pre-1914 appropriative right claim, the Division has no adjudicatory authority to quantify such a claim. Only the courts can make this determination. The most recent evidence submitted by the Coles and their legal counsel indicates that diversion of water from Stanshaw Creek into their ditch, and the subsequent use of this water for irrigation and domestic purposes at the Marble Mountain Ranch, was initiated prior to 1914 using at least as much, if not more, water than is used today. All available evidence suggests that the diversion and use has been maintained in a diligent and continuous fashion ever since. Consequently, we believe that a court would find that the Coles have a valid claim of a pre-1914 appropriative right to divert water for the full irrigation and domestic uses currently maintained, including reasonable conveyance losses.

While the Cole's current diversion of water for power purposes is not technically covered by a permit, this diversion and use has been ongoing for almost 60 years. Diversions prior to a determination regarding issuance of a permit are very common, especially for long-standing diversions such as the Cole's. The State Water Resources Control Board (SWRCB) has discretion whether to take enforcement action against an unauthorized diversion of water. Upon reviewing a complaint, the SWRCB may decide not to take enforcement action, or to defer consideration of enforcement. The SWRCB may consider several factors when deciding whether to pursue enforcement. One factor the SWRCB weighs is the willingness of the water diverter to legitimize the diversion. The SWRCB may choose not to initiate enforcement against a person who files an application promptly upon notification of the complaint, and then

*California Environmental Protection Agency*

Klamath Forest Alliance

2

AUG 22 2002

diligently pursues the application, complies with all application requirements and requests for information, and cooperates with SWRCB staff. While the Cole's application (A029449) has been pending for an extraordinarily long time, there is no indication in the application file that the Coles have not pursued approval of their application in a diligent fashion.

Potential Injury to Other Uses of Water - Another important factor in considering enforcement is the extent of injury caused by the water diversion. If a complaint investigation shows the unauthorized diversion is causing little or no injury to established right holders or to public trust values, the SWRCB may decide *not* to take enforcement action. The SWRCB may also consider the degree of hardship that enforcement action would impose on persons who rely on the diversion of water when it decides whether to take enforcement action in response to a complaint. Based on available evidence and rationale described in the Staff Report of Investigation, Complaint Unit staff concluded that there would be little potential for harm to other diverters or public trust resources if the Coles were allowed to divert water for power purposes, as long as a minimum bypass flow is maintained similar to that occurring during their investigation. You disagree with this conclusion, and make reference to the professional opinions of staff for the National Marine Fisheries Service, Department of Fish and Game, Karuk Tribe, and Humboldt State University. While we have received copies of these opinions, the evidence and logical rationale on which these opinions are based has not been submitted. Consequently, I believe the prima facie evidence utilized by Complaint Unit staff is more persuasive. Asking the Coles to terminate their diversion would also cause severe economic hardship on them without providing much if any benefit to the instream resources.

I do agree with you that the Cole's application has been pending for far too long. This application has been noticed and protests received. I doubt the parties will be able to resolve these protests amicably amongst themselves. The next steps in the process would be to complete an environmental review of the project pursuant to the California Environmental Quality Act (CEQA), and then proceed to protest resolution via either a field investigation or formal hearing. I have directed the Division's Environmental Section to give as much priority as possible to this application so that final resolution of the protests can be achieved as soon as feasible. I have also asked the Division's Application and Environmental units to send copies of all correspondence to you so that you will be kept apprised of the progress in this matter.

In the meantime, I expect the Coles to maintain a minimum bypass, as described in the Staff Report of Investigation. Failure to do so could result in a reevaluation of the need for enforcement action prior to a final determination of the Cole's request for a permit.

If there are any questions regarding this matter, please contact Charles Rich, Chief of the Division's Complaint Unit, at (916) 341-5377.

Sincerely,

ORIGINAL SIGNED BY

Edward C. Anton, Chief  
Division of Water Rights

cc: See next page.

Klamath Forest Alliance

3

AUG 22 2002

cc: Mr. Doug and Mrs. Heidi Cole  
c/o Jan Goldsmith  
Kronick, Moskovitz, Tiedemann & Girard  
400 Capitol Mall, 27th Floor  
Sacramento, CA 95814-3363

Mr. Doug and Mrs. Heidi Cole  
92250 Highway 96  
Somes Bar, CA 95568

Department of Fish and Game  
Environmental Services  
Attention Mr. Ron Presley and  
Jane Vorpapel  
601 Locust Street  
Redding, CA 96001

National Marine Fisheries Service  
Santa Rosa Field Office  
Attention Tim Broadman and  
Margaret Tauzer  
777 Sonoma Avenue, Room 325  
Santa Rosa, CA 95404

William M. Heitler, District Ranger  
U.S. Department of Agriculture  
Orleans Ranger District  
P.O. Drawer 410  
Orleans, CA 95556-0410

Mr. Jim De Pree  
Siskiyou County Planning Department  
P.O. Box 1085  
Courthouse Annex  
Yreka, CA 96097

Mr. Konrad Fisher  
3210 Klingle Road NW  
Washington, D.C. 20008

Karuk Tribe of California  
Department of Natural Resources  
Attention Mr. Toz Soto  
P.O. Box 282  
Orleans, CA 95556

bcc: Larry Attaway, Ross Swenerton  
MContreras\lfischer 8/16/02  
U:\Comdrv\MContreras\KFA v Cole appeal rejection letter

000595



# State Water Resources Control Board



WR-5

**Winston H. Hickox**  
Secretary for  
Environmental  
Protection

## Division of Water Rights

1001 I Street, 14<sup>th</sup> Floor • Sacramento, California 95814 • (916) 341-5307  
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000  
FAX (916) 341-5400 • Web Site Address: <http://www.swrcb.ca.gov>  
Division of Water Rights: <http://www.waterrights.ca.gov>

RAS

**Gray Davis**  
Governor

**MAY 23 2002**

In Reply Refer to:  
363:MC:262.0(47-40-01)

Klamath Forest Alliance  
c/o Law offices of Donald B. Mooney  
129 C Street, Suite 2  
Davis, CA 95616

Mr. Doug and Mrs. Heidi Cole  
c/o Ms. Jan Goldsmith  
Kronick, Moskovitz, Tiedemann & Girard  
400 Capitol Mall, 27th Floor  
Sacramento, CA 95814-3363

Ladies and Gentlemen:

### WATER RIGHTS COMPLAINT SUBMITTED BY THE KLAMATH FOREST ALLIANCE – ALLEGING UNREASONABLE DIVERSION

Complaint Unit staff of the Division of Water Rights have completed their investigation of the complaint lodged by the Klamath Forest Alliance (KFA) against Doug and Heidi Cole (dba Marble Mountain Ranch). A copy of the Staff Report of Investigation regarding this matter is enclosed. Complaint Unit staff reached the following conclusions:

1. A court of competent jurisdiction would most likely confirm that the Coles have a valid pre-1914 appropriative right to divert water from Stanshaw Creek for full domestic and irrigation purposes at the Marble Mountain Ranch.
2. Evidence has not been submitted to substantiate a pre-1914 appropriative right for power purposes but A029449, if approved, should cover all diversions for power purposes.
3. With the current irrigation system, most diversions for power purposes during the low-flow periods of the year are incidental to domestic and irrigation needs.
4. Prima facie evidence is available to indicate that lower Stanshaw Creek does provide habitat for "thermal refuge" when temperatures in the Klamath River become detrimental to the health and well being of fish life.
5. Bypasses similar to those present during the field investigation should provide adequate habitat for thermal refuge purposes.
6. Measuring flows on a regular basis in Stanshaw Creek is not practical. Any requirement to measure minimum bypass flows should **not** be established unless the requirement acknowledges that a sufficient diversion of water will be allowed into the Coles' ditch to cover both the diversion and bypass requirement with subsequent measurement and release of a bypass back into the stream.
7. Considerable benefit might accrue to all sides of this dispute if an appropriate physical solution were to be implemented.

### California Environmental Protection Agency

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MAY 23 2002

Based on these conclusions, Complaint Unit staff believe the following actions are appropriate:

1. That the Coles be directed to cease all diversion of water whether pursuant to a pre-1914 appropriative claim of right or post-1914 appropriative rights derived from Application 29449 or Small Domestic Registration D030945R unless sufficient flow is passed below their Point of Diversion to maintain a flow in lower Stanshaw Creek below the Highway 96 culverts similar to that present during the October 16, 2001, field investigation ( $\approx 0.7$  cfs).
2. That the required bypass flow be determined in one of two fashions:
  - a) if full diversion of the creek into the Coles' ditch is not allowed, the flow should be visually estimated so that sufficient flow would be available to fill a small, hand-dug ditch between the terminal pool of Stanshaw Creek and the Klamath River; or
  - b) if full diversion of the creek into the Coles' ditch is allowed, a device shall be installed capable of bypassing sufficient flow to maintain 0.7 cfs in the creek below the Highway 96 culverts before any water is passed down the diversion ditch to Marble Mountain Ranch.
3. That the complaint filed by KFA against the Coles be closed.
4. That the parties give serious consideration to a physical solution similar to that discussed in the Staff Report of Investigation.

If either party to the complaint disagrees with the conclusions reached by Complaint Unit staff, please let me know of the points with which you disagree and the specific evidence you believe is available to substantiate or justify a different conclusion or action. If we do not hear from you within 30 days from the date of this letter, we will assume that you agree with the conclusions and recommendations contained therein. If the Coles are unable to produce evidence to justify a different recommendation, failure on their part to maintain the bypass flows as specified may result in appropriate enforcement action without further notice. Similarly, if the KFA is unable to provide evidence to justify a different course of action, this complaint would be subject to closure without further notice.

If you have any questions regarding this matter, please contact me at (916) 341-5307.

Sincerely,

ORIGINAL SIGNED BY

Michael Contreras  
Complaint Unit

Enclosures

cc: See next page.

Klamath Forest Alliance  
Mr. Doug and Mrs. Heidi Cole

3

MAY 23 2002

WR-5

cc: Mr. Doug and Mrs. Heidi Cole  
92250 Highway 96  
Somes Bar, CA 95568

Department of Fish and Game  
Environmental Services  
c/o Mr. Ron Prestly  
601 Locust Street  
Redding, CA 96001

National Marine Fisheries Service  
Santa Rosa Field Office  
Attention Tim Broadman  
Margaret Tauzer  
777 Sonoma Avenue, Room 325  
Santa Rosa, CA 95404

William M. Heitler, District Ranger  
U.S. Department of Agriculture  
Orleans Ranger District  
P.O. Drawer 410  
Orleans, CA 95556-0410

Mr. Jim De Pree  
Siskiyou County Planning Department  
P.O. Box 1085  
Courthouse Annex  
Yreka, CA 96097

Mr. Konrad Fisher  
3210 Klinge Road NW  
Washington, D.C. 20008

Karuk Tribe of California  
Department of Natural Resources  
Attention Mr. Toz Soto  
P.O. Box 282  
Orleans, CA 95556

bcc: RAS

MContreras\lfischer 5/22/02  
U:\Comdrv\MContreras\Cole closure letter

000598

# Environmental Details

WR-5

APPLICATION ID 29449 WRIMS APPL. ID A029449 ENGR CONTACT LLE UPDATE DATE 10/01/2002 CASE IN DATE 04/04/1989

## APPLICANT OR PROJECT NAME

COLE

## SOURCE

STANSHAW CRK

## COUNTY

SIS

## NOTICE DATE

03/17/2000

## PROTEST DATE

03/20/2000

## WATERSHED

KLAMATH RIVER

## EAS CASE ACTIVITY DATA:

## SUPERVISOR

RAS

## EAS CONTACT

JES

## PROJ CONSTRUCTED

Y

## ES REQUEST DATE

08/22/2002

## PENDING ES ASSIGNMENT RANK

3

## LEAD AGENCY FOR CEQA

SWRCB

## DATE RESPONSE Y/N

## MOU DUE

## DATE MOU REC

## PRELIM WORKPLAN DUE

## DATE PRELIM WKPL REC

## FINAL WORKPLAN DUE

## DATE FINAL WKPL REC

## NEXT STEP

PREPARE CEQA DOC; RESOLVE PROTESTS (WC 1335 PROCESS?)

## WHO IS RESPONSIBLE

EAS

## NEXT STEP COMMENTS

ECA 8/22/02 LETTER FINDS 0.7 CFS BYPASS ADEQUATE; DIRECTS EAS TO COMPLETE CEQA DOC &amp; RESOLVE PROTESTS (1335?)

## EAS ACTIVITY ASSIGNED

DRAFT MOU LETTER

## WHO IS ASSIGNED

JES

## ACTIVITY TARGET DATE

10/31/2002

## EAS REMARKS Part 1 of 2

EXISTING 3 CFS DD FROM STANSHAW CRK 4 HYDROPOWER W/TAILWATER EXPORT TO IRVING CRK. POTENTIAL IMPACTS ON T+E SALMONIDS IN LOWER STANSHAW CRK (ESP IN SUMMER). ARCH SURVEY REQ'D. DFG, NMFS, CSFA &amp; FISHER (RIPARIAN) PROTESTED. RAS/REM ATTENDED DFG/NMFS 7/28/00

## EAS REMARKS Part 2 of 2

SITE MTG TO CONSIDER FISH BYPASS TERMS NEEDED. DFG WANTS 2.5 CFS BYPASS; NMFS WANTS 1.5 CFS. KLAMATH FOREST ALLIANCE (KMA) FILED COMPLAINT; CU INVESTIGATED (DFG, NMFS &amp; FISHER PARTICIPATED) &amp; ECA 8/22/02 LETTER FINDS 0.7 CFS BYPASS ADEQUATE. ASSIGN ES

CASE CATEGORY 1

CASE ACTIVITY LEVEL B

## ARCHEOLOGICAL CASE DATA:

## ARCHEOLOGIST REMARKS

NOT REFERRED TO ARCH AS OF 7/96 NATIVE AMERICAN CONCERNS. I CAN'T REMEMBER WHY NA CONCERNS W/O MAIN FILE-4YRS AGO. NEEDS AN ARCH SURVEY

## ARCHEOLOGIST ASSIGNED

DJS

## ARCH. SURVEY REQ'D

Y

## CLEARANCE DATE

## EAS CASE STEPS COMPLETED:

PRELIMINARY REVIEW DATE 07/13/2000

DEFICIENCY TO APPL DATE 05/26/1989

SCH CLOSING DATE ND

NOTICE OF EIR PREP. DATE

SCH CLOSING DATE EIR

EAS ENV DOC TYPE SIS

EAS ENV DOC COMPLETED DATE

CASE OUT DATE

000599



# State Water Resources Control Board

WR-5



**Winston H. Hickox**  
Secretary for  
Environmental  
Protection

**Division of Water Rights**  
1001 I Street, 14<sup>th</sup> Floor • Sacramento, California 95814 • (916) 341-5377  
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000  
FAX (916) 341-5400 • Web Site Address: <http://www.swrcb.ca.gov>  
Division of Water Rights: <http://www.waterrights.ca.gov>

**Gray Davis**  
Governor

## Memorandum to File

To: File Number 262.0 (47-40-01)

Date: MAY 23 2002

From: Charles A. Rich  
Charles A. Rich, Chief  
Complaint Unit

Michael Contreras  
Michael Contreras  
Environmental Specialist III  
Complaint Unit

**SUBJECT:** WATER RIGHTS COMPLAINT LODGED BY THE KLAMATH FOREST ALLIANCE AGAINST DOUG AND HEIDI COLE REGARDING DIVERSION OF WATER FROM STANSHAW CREEK IN SISKIYOU COUNTY

### BACKGROUND

The Division of Water Rights (Division) received a complaint on June 18, 2001 from the Klamath Forest Alliance against Doug and Heidi Cole. This complaint contains the following allegations:

1. The Cole's diversions are unauthorized as they exceed pre-1914 appropriative rights and the Cole's have no post-1914 appropriative rights for power diversions, as a permit has not been issued pursuant to pending Application A029449; and
2. The Cole's diversions adversely impact public trust resources in an unreasonable manner.

Ms. Janet Goldsmith, legal counsel for the Coles, responded to this complaint via a letter dated August 20, 2001. This response contains the following assertions:

1. The Cole's diversions have been continuous since before 1914 and are covered by a valid pre-1914 appropriative claim of right.
2. The complainant has not provided any factual evidence indicating that the Cole's diversions are adversely impacting fishery resources in either Stanshaw Creek or the Klamath River.

### FIELD INVESTIGATION

On October 17, 2001, staff of the Complaint Unit conducted a field investigation for the subject complaint. Prior to meeting the parties, Complaint Unit staff undertook a flow

measurement in Stanshaw Creek approximately 60 feet downstream of two culverts that pass underneath Highway 96. A flow of 0.61 cubic feet per second (cfs) was measured using a current velocity meter. Water temperature was measured at 8:30 a.m. to be 52°F. The twin, semicircular culverts that carry the creek under Highway 96 are approximately 320 feet long, 6 feet high, and 10 feet wide each. The slope of the floor of these culverts is about 9%. All of these measurements were made with the aid of a laser range finder and/or tape measure. No debris was observed in the culverts, indicating that they were designed to be and function quite well as self-cleaning conduits.

Complaint Unit staff then located the downstream end of the tailwater ditch coming from the Cole property a short distance above the point where unused water is discharged to Irving Creek. Flow was measured to be 0.1 cfs with a current velocity meter. Water temperature was measured to be 54°F.

Complaint Unit staff next met with the parties at the Marble Mountain Ranch dining room. Approximately 30 individuals participated representing the following entities:

- the Coles; including Mr. & Mrs. Cole and their legal counsel, Jan Goldsmith;
- the Klamath Forest Alliance (KFA); including Felice Pace for the KFA and their legal counsel, Don Mooney,
- representatives of the California Department of Fish & Game (DF&G),
- representatives of the National Marine Fisheries Service (NMFS); including Dr. Stacy Li,
- the Karuk Tribe; including Toz Soto, their fisheries biologist, several tribal elders and numerous tribe members,
- Konrad Fischer, son of James Fischer, who owns the property along the southern bank of Stanshaw Creek between Highway 96 and the Klamath River, and the caretaker for this property who lives there on a continuous basis, and
- Charles Rich and Michael Contreras from the Division's Complaint Unit

Complaint Unit staff started the meeting by explaining the typical complaint process:

- 1) complaint is filed,
- 2) answer is requested,
- 3) answer to complaint is provided at the option of the respondent,
- 4) Complaint Unit staff conduct field investigation if necessary, and
- 5) a Report of Investigation is prepared and transmitted to the parties along with recommendations for action regarding the complaint.

Complaint Unit staff also explained the adjudicatory authority of the State Water Resources Control Board (SWRCB) with respect to pre-1914 appropriative rights. The pre-1914 appropriative claims of right of the Coles were discussed.

After this discussion, several parties stated that they believe the Cole's diversions are adversely impacting anadromous fish that frequent Stanshaw Creek. Complaint Unit staff pursued this topic and asked what evidence is available to support these allegations. The parties present were unable to identify much evidence. They indicated that no formal studies regarding public trust resources in Stanshaw Creek have been undertaken. Visual observations of juvenile fish in the creek have been made. Several biologists indicated that they believe lower Stanshaw Creek provides a thermal refuge or "refugia" for juvenile fish when temperatures in the Klamath River reach lethal levels. They stated that sufficient flow to maintain a continuous connection with the river are very important.

Some of the parties also argued that Stanshaw Creek may provide spawning habitat for adult salmon or steelhead trout. However, they were unable to provide any substantial evidence in support of these allegations.

Complaint Unit staff asked if the Cole's tailwater that is discharged into Irving Creek provides more benefit to fish life in Irving Creek than it would to fish life if left in Stanshaw Creek. All of the biologists present indicated that Irving Creek has sufficient water to provide adequate habitat. Adding water diverted from Stanshaw Creek would not increase this habitat significantly. They felt, however, that leaving the water in Stanshaw Creek would be more beneficial if additional areas of thermal refuge were generated as a result.

After the discussion in the dining room ended, the parties proceeded to the Cole's powerplant and then on to the point of diversion (POD) on Stanshaw Creek. The flow was too low to generate power but water was being bypassed around the plant for irrigation. Complaint Unit staff visually estimated this flow to be approximately 0.6 cfs. The flow in Stanshaw Creek immediately upstream of the POD was measured with a current velocity meter to be 1.16 cfs. The creek in this reach consists of large boulders that form a fairly continuous group of cascading pools. There was no section where a highly accurate flow measurement could be made due to the steep grade and large numbers of rocks, many of which can be washed downstream during high flow events. The flow in the diversion canal just below the POD was measured to be 0.68 cfs using a current velocity meter.

The inspection party then proceeded to the lower reach of Stanshaw Creek along the property owned by Mr. Fischer. The creek would normally end in a small pool that is separated at low flows from the river by a sand bar on which extensive amounts of phreatophytic vegetation exists. The Fisher's caretaker indicated that he maintains a hand-dug channel between this pond and the river along the downstream periphery of the sand bar during the summer, low-flow period, to enable juvenile fish to enter the lower reach of the creek. Flow in the creek about 100 - 200 feet above the terminal

pool was estimated<sup>1</sup> to be no more than 0.41 cfs. Water temperature was measured during the mid-afternoon period to be 56°F. At low flows<sup>2</sup>, the entire reach of Stanshaw Creek between the highway and the confluence with the Klamath River is essentially a series of cascading pools. The stream in this reach is covered by a dense riparian canopy. Complaint Unit staff asked Dr. Li if juvenile fish would have a difficult time accessing these pools with the existing flows as there were no runs or riffles present, only cascades between each pool. Dr. Li stated that juvenile fish would have no problem accessing the pools with the flows occurring during the inspection. The inspection ended at this time.

### **ANALYSIS**

The following issues need to be addressed in order to resolve the current complaint:

1. Unauthorized diversion
2. Adverse impacts to prior right holders
3. Unreasonable impacts to public trust resources

### **Unauthorized Diversion of Water**

The KFA contends that the Coles do not have sufficient pre-1914 appropriative rights to justify current diversions. The Cole's legal counsel has responded by claiming pre-1914 appropriative rights for all diversions. Past correspondence prepared by various individuals within the Division has contained questions about the validity of these claims. However, the SWRCB does not have adjudicatory authority regarding pre-1914 appropriative rights. When allegations are made that a pre-1914 appropriative right does not exist or is inadequate to justify all existing diversions, Complaint Unit staff analyze the situation to see if they believe sufficient evidence is available to dispute the claimed rights such that a court of competent jurisdiction would likely agree. If such evidence exists, Complaint Unit staff typically recommend that the diverter be asked to take action to rectify the unauthorized diversion. If the diverter fails to take adequate action, appropriate enforcement action may follow.

At the meeting previous to the physical investigation, Complaint Unit staff explained that recently provided evidence by the Cole's legal counsel in response to the complaint appeared to support a claim that diversion from Stanshaw Creek to the Marble

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<sup>1</sup> - The stream did not contain a smooth flowing section in this reach in which to take a standardized flow measurement. Consequently, the flow was estimated with a current velocity meter by measuring the general dimensions of a "v"-shaped spill plume from a pool and the central velocity of the plume.

<sup>2</sup> - Based on visual observation of the hydraulic characteristics of the lower stream channel in relation to the flow measured during the field investigation, Complaint Unit staff believe that this lower reach of Stanshaw Creek remains a series of cascading pools until flows in the creek become large in comparison to the Cole's ability to divert water (e.g., >15 cfs flow vs 3 cfs diversion).

Memo to File

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May 23, 2002

Mountain Ranch was initiated well before 1914 for domestic and irrigation purposes, and has been maintained in a continuous or diligent fashion ever since. Complaint Unit staff believe that the current diversion and use of water for domestic and irrigation purposes is no greater than and, quite possibly, somewhat smaller than maximum historic diversions as a portion of the area that was apparently irrigated for many years both before and after 1914 has been converted to resort housing or other facilities, and is no longer being irrigated.

Even though legal counsel for the Coles claimed a pre-1914 appropriative right for power purposes in her letter of August 20, 2001, Complaint Unit staff are not aware of any specific evidence supporting such a claim. Based on previous discussions with Mrs. Cole's father, Mr. Squires, Complaint Unit staff currently believe that the initial application of water for power purposes occurred shortly after the end of World War II, even though the original pelton wheel employed dates from the early 1900's. However, Application A029449 is pending and, if approved, would cover all existing and anticipated diversions for power purposes.

While diversions pursuant to a pending application are technically not authorized until a permit is actually issued, diversions prior to a determination regarding issuance of a permit is very common, especially for long-standing diversions such as the Cole's. The SWRCB has discretion whether to take enforcement action against an unauthorized diversion of water. Upon reviewing a complaint, the SWRCB may decide not to take enforcement action, or to defer consideration of enforcement. The SWRCB may consider several factors when deciding whether to pursue enforcement. One factor the SWRCB weighs is the willingness of the water diverter to legitimize the diversion. The SWRCB may choose not to enforce against a person who files an application promptly upon notification of the complaint, and diligently pursues the application, including cooperation in providing information requested by the SWRCB and compliance with other requirements of the application process. While the Cole's application (A029449) has been pending for an extraordinarily long time, there is no indication in the application file that the Coles have not pursued approval of their application in a diligent fashion.

Another weighed factor is the extent of injury caused by the water diversion. If an investigation shows the unauthorized diversion is causing little or no injury to established right holders or to public trust values, the SWRCB may decide not to take enforcement action. The SWRCB may also consider the degree of hardship enforcement would impose on persons who rely on the diversion of water in deciding whether to take enforcement action in response to a complaint. The application of these factors, as they apply to this complaint, are discussed below.



### **Adverse Impacts to Prior Right Holders**

While the KFA complaint does not contain allegations that the Cole's diversions are adversely impacting downstream diverters, a protest was filed against A029449 by T. James Fisher, J.W. Fisher Logging Company, and Phylis Fisher alleging potential injury to prior rights. In view of the KFA complaint and the inspection by Complaint Unit staff, the potential for adverse impacts to downstream diverters along Stanshaw Creek is also being evaluated as part of this investigation.

According to the caretaker for the Fisher property, water is diverted from Stanshaw Creek a short distance downstream of the Highway 96 culverts for domestic and some minor irrigation use. Diversions at this location apparently began after 1914. The Division has no record of a post-1914 appropriative right covering this diversion. Consequently, these diversions are presumably made under a riparian claim of right<sup>3</sup>. Complaint Unit staff are not aware of any evidence that would suggest that such a claim of right would not be upheld by a court of competent jurisdiction.

Complaint Unit staff understand that the Cole's basis of right for diversion from Stanshaw Creek consists of:

1. Pre-1914 appropriative claim of right for domestic / irrigation use. This right has not been quantified or a definitive priority established by court action. The maximum diversion rate that might be justified is the capacity of the ditch. The date of priority for this right may be as early as 1880.
2. Application A029449 – This pending application is for 3.0 cfs year round diversion for power purposes. A permit has not been issued for this application. Consequently, diversion of water under this right has not been approved. The date of priority for this right, if the application is approved, would be March 27, 1989.
3. Small Domestic Registration D030945R – This certificate authorizes year round diversion to off-stream storage of up to 10 acre-feet per annum in the small reservoir located near the bottom end of the Cole ditch. The date of priority for this right is September 17, 1999.

The Fisher riparian claim of right has a higher priority than that of A029449 and D030945R. The relative priorities of the Fisher riparian claim and the Cole's pre-1914 appropriative claim of right is more difficult to evaluate. Only a court of competent jurisdiction has the power to adjudicate these rights. Riparian rights typically have the highest priority in California. However, a riparian right attaching to a particular parcel of

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<sup>3</sup> - The Division has no record of a Statement of Water Diversion and Use (Statement) being filed for this diversion and use of water. Unless this diversion and use is included in the reports of some other entity, a Statement should be filed.

land is generally subject to appropriative rights established by diversion upon the vacant public domain before the first valid steps were taken to acquire said parcel of land from the United States, whether diversion was made at points upstream or downstream. Because diversion of water to the Cole's property may have been initiated before steps were taken to obtain the Fisher property from the government, the Cole's pre-1914 appropriative claim of right may have a higher priority than the Fisher riparian claim of right.

Flows in Stanshaw Creek will most likely be sufficient to satisfy the demands of both the Cole and the Fisher interests except during the low flow periods of the irrigation season. During this period of time, the diversion of water pursuant A029449 and D030945R is often incidental to the Cole's pre-1914 claim of right. Consequently, unless all or a portion of the Cole's diversion of water is being made exclusively for: (1) power purposes or (2) to fill the small reservoir on the Cole property, any disputes over competing rights would need to be resolved in the court system by determining the relative priorities of the riparian and pre-1914 appropriative claims of right.

#### **Unreasonable Impacts to Public Trust Resources**

Complaints containing allegations of unreasonable adverse impacts to public trust resources by diverters are often evaluated differently depending upon the basis of right. If the diverter appears to possess a valid basis of right for the diversion, evidence must be available to support allegations that the water diverted has caused, or is likely to cause, an unreasonable adverse impact to the public trust, i.e. the public's right to use the State's waters for instream purposes such as recreation, navigation, and fish and wildlife<sup>4</sup>. In order to make this finding, evidence should be available to demonstrate that:

- a. public trust resources exist in the stream;
- b. these resources are being adversely impacted due to the diversions from the stream by the water right holder and not by normal variances in the water supply or other factors that are beyond the control of the water right holder, such as land use development, discharge of pollutants, etc. by other parties;
- c. the impacts on public trust resources are significant, considering both the magnitude of the impact and the sensitivity and significance of the public trust resources affected; and

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<sup>4</sup> - In other words, evidence must be available to demonstrate the likelihood that unreasonable impacts are occurring rather than requiring the diverter to demonstrate that adverse impacts are not likely to occur. This is synonymous with the "innocent until proven guilty" concept of the law.

- d. the protection of public trust resources is feasible, considering any reduction or cessation of diversions that may be necessary to protect the public trust and whether the public interest in those diversions may outweigh the adverse impacts on the public trust.

If the diversion is being made pursuant to a pending application for which a permit is being diligently pursued and "prima facie" evidence is available suggesting that the diversion may be causing adverse impacts to public trust resources, the Division will typically direct the diverter to take action to prevent or mitigate the impacts or, if necessary, terminate the diversion.

With respect to the Cole's diversion pursuant to their pre-1914 appropriative claim and D030945R, the burden of demonstrating that public trust resources are being adversely impacted in an unreasonable fashion rests with the KFA. The test of potential harm and need for corrective action is considerably less for the Cole's pending application.

The KFA alleges that the Cole's diversion of water is adversely impacting anadromous fish that utilize Stanshaw Creek. Very little information is available regarding the use of this water body by anadromous fish. The DF&G submitted a memorandum dated November 20, 2001, and the NMFS submitted a letter dated November 15, 2001, (copies attached) regarding the Cole's diversion of water. Both documents discuss the status of anadromous fish pursuant to state and federal endangered species laws and make recommendations regarding "protest dismissal terms". However, the complaint investigation process is not intended to resolve "protests". Instead, the purpose of a complaint investigation is to determine what type of evidence is currently available. Neither one of these documents provides or references much evidence.

Complaint Unit staff believe that use of Stanshaw Creek by anadromous fish is generally limited to the reach from the Highway 96 culverts to the Klamath River. These culverts appear to have been designed to be self-cleaning due to the steep slope. Complaint Unit staff noted that there was essentially no sediment or debris inside these culverts, indicative that high scour velocities are maintained. High water velocities coupled with the length of these conduits probably prevent movement of spawning or juvenile fish upstream. This conclusion appears to be consistent with those of both the DF&G and the NMFS. The NMFS letter states: *"The culvert under Highway 96 at Stanshaw Creek is listed on resource agencies master list for culverts with passage problems. CalTrans has stated that they will replace the culvert in the future to allow salmonid passage."* While removal of the culverts might change the situation, this task will be a significant undertaking and is not likely to occur anytime soon. Consequently, until such time as the culverts are actually removed, Complaint Unit staff believe that only those actions by the Coles that would have a bearing on the health and well being of fishery resources in Stanshaw Creek between Highway 96 and the Klamath River need be addressed.

The DF&G memo contains the following recommendation:

*The Department proposes year-round bypass flows of 2.5 cubic feet per second (cfs) to be measured at the culverts below Highway 96 to mitigate potential impacts from the diversion on Stanshaw Creek. Our objective for these flows is to ensure existing instream habitat conditions in Stanshaw Creek for coho salmon and steelhead are maintained, water temperatures remain cold and year-round access to the stream from the Klamath River is guaranteed. To accomplish this objective, we recommend the total stream flow be bypassed whenever it is less than the designated amount. Based on field reviews and best professional judgment, it was determined that 2.5 cfs should maintain connectivity and an adequate channel which allows salmonids access to Stanshaw Creek from the Klamath River. However, the Department may require additional bypass flows in the future if conditions change such that 2.5 cfs is no longer adequate to allow salmonid passage at the mouth of Stanshaw Creek. Future modification of the barriers or more detailed studies may also indicate a need for higher instream flows.*

During the meeting portion of the inspection, biologists representing the DF&G, the NMFS, and the Karuk Tribe all stated that temperatures in the Klamath River often reach lethal levels during the warmer months of the year. They believe that small, side tributaries with cold water flows such as Stanshaw Creek provide "thermal refuges" that are crucial to the survival of juvenile anadromous fish.

On the day of the complaint inspection, water temperature was measured at 52°F in the early morning with a flow of 0.61 cfs<sup>5</sup>. Water temperature in the mid-afternoon downstream of the "Fisher" POD was measured at 56°F with a flow of 0.41 cfs<sup>6</sup>. Water temperature was measured by Division staff on July 26, 2000, and found to be 54°F. No flow measurements were taken at that time, but photographs of the culverts indicate that flows were higher; possibly in the 2-3+ cfs range. According to the Environmental Field Report for this visit, water temperature is not an issue. Complaint Unit staff agree. The lower portion of Stanshaw Creek contains excellent cover and there is no evidence currently available to indicate that the Cole's diversion of water creates a temperature

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<sup>5</sup> - Making good flow measurements in a channel containing mainly pools and cascades with a current velocity meter is extremely difficult. Consequently, these measurements are not considered highly accurate, but instead should only be used for an idea of the relative amounts of flow present.

<sup>6</sup> - This measurement was made at the request of KFA and fishery representatives. Complaint Unit staff were reluctant to undertake a measurement in a reach of the creek that consisted solely of pools and cascades. This measurement was quite rudimentary and may only have an accuracy of ±50%.

problem in the reach between Highway 96 and the Klamath River as long as minimum flows are maintained similar to those occurring during the complaint investigation.

The reach of Stanshaw Creek between the Highway 96 culverts and the Klamath River consists of a series of cascading pools with essentially no runs or riffles present during periods of low flow. Complaint Unit staff believe that this lower reach of Stanshaw Creek remains a series of cascading pools until flows in the creek become quite large in comparison to the Cole's ability to divert water. Bypass flows on the order of ½ to 1 cfs should produce essentially the same amount and quality of habitat as flows on the order of 2 – 3 cfs. Consequently, as summer flows decrease due to either a recession in the natural hydrograph or diversions by the Coles, there shouldn't be much change in the spatial habitat available to fish.

The channel configuration indicates that winter flows are much higher than the flows the Coles might divert. These flows may produce conditions that allow anadromous fish to spawn. However, diversion by the Coles during these periods should also have negligible effect on the fish.

The fishery biologists pointed out that the cold water habitat of Stanshaw Creek is of little value if the Coles do not bypass sufficient flows of water to provide access between the river and the creek. Our inspection revealed that there was no natural surface connection between the creek and the river at the time of the inspection. Flows in the creek terminated in a pool that is separated at low flows from the river by a sand bar on which extensive amounts of phreatophytic vegetation exists. Significant quantities of water can no doubt seep through the sand bar before a natural surface flow connection with the river occurs. The sand bar is most likely a dynamic phenomenon and may not be in place every year or at all times of the year. However, the extent of the vegetation on the sand bar indicates that this is not a fleeting fixture.

While at times there may not be a natural surface connection with the river, the caretaker for the Fisher property showed us a hand-dug channel that he maintains between the river and the pond. This channel provides some access to the creek and the thermal refuge found therein. Consequently, there is a benefit in maintaining sufficient flow in the lower reach to keep the artificial channel flowing. Dr. Li indicated that the flows existing at the time of the inspection were quite adequate to provide for passage of juvenile fish from the river to the thermal refuge in the pools. Consequently, flows similar to those observed during the inspection on October 17, 2001, would appear to be adequate.

Undertaking measurements of flows in the creek would be an extremely difficult, if not impossible, task. Conditions in the creek are such that installation of a device(s) that would enable measurement of flows (e.g., flume, weir, or stage vs. flow correlation) would require a major construction effort coupled with maintenance and possible reconstruction on a continual basis. A more practical method of measuring bypasses

would be to divert all of the low flows into the Cole's ditch and use an appropriately designed "splitter box" to ensure that a minimum flow is returned back to the creek in the immediate vicinity of the diversion. However, this would require the construction of a dam to direct all flow into the ditch before returning a set amount or percentage of flow back to the creek. The DF&G has obtained an injunction that prohibits installation of such a dam. Consequently, a reasonable request would be that the Coles bypass sufficient flow at all times at their POD to provide continuity of flow between Stanshaw Creek below the Highway 96 culverts and the Klamath River. If the Fisher's caretaker does not maintain the artificial channel between the terminal pool and the river, the Coles should still bypass sufficient water to maintain flow between the pools located downstream of the Highway 96 culverts in order to maintain habitat for any fishlife that is present in this reach. If the DF&G is willing to allow full diversion of the creek into the Cole's ditch, a measurable bypass requirement should be established, probably on the order of 1/2 to 1 cfs based on further analysis of the amount of bypass necessary to maintain hydraulic continuity between lower Stanshaw Creek and the Klamath River.

The KFA did not file a complaint against the Fishers and neither the DF&G or the NMFS have indicated any concerns with their diversion. However, the Fisher diversion is capable of removing water from Stanshaw Creek in the same manner as the Cole's diversion; albeit at a smaller rate. Consequently, if flows in lower Stanshaw Creek are inadequate to maintain public trust resources, the Fishers may also need to reduce their diversion of water. Determining which diversion needed to be reduced first, either the Cole's or the Fisher's, could only be established after a court rules on the relative priorities of both diversions.

### **PHYSICAL SOLUTION**

There may be a physical solution that would be of benefit to all sides of this situation. The "fishery advocates" would like to see more water passed below the Cole's POD. The Coles want to be able to divert sufficient water to generate power and maintain consumptive water uses at their guest ranch. One way of possibly meeting both interests would be to move the power generation facility completely into the Stanshaw Creek watershed. This would require construction of a diversion dam capable of diverting most, if not all, of the flow of the creek into a penstock. The generating unit would be located down gradient along the creek, possibly immediately upstream of the Highway 96 culverts. Power would be transmitted over the drainage divide to the guest ranch. The diversion dam could be designed and constructed to provide a minimum bypass flow before any water is diverted from the creek to maintain a minimum flow between the diversion structure and powerplant discharge. A consumptive use water supply line(s) could also be run from the diversion dam to the ranch to provide a pressurized water system capable of operating an automated sprinkler irrigation system and domestic water supply system.

The Coles would benefit with increased power production especially during the summer, low flow season. This would save them considerable costs associated with generating power using an expensive fossil fuel generator. The pressurized water line(s) would also allow them to develop a more efficient irrigation system that could be automated; thus saving labor costs as well. The pressurized system would also reduce the amount of labor required to maintain the current ditch; especially during storm events when overland runoff coupled with fallen leaves and tree limbs pose a significant threat to the integrity of the ditch.

The "fishery advocates" would benefit by seeing dramatically increased flows in the lower reaches of Stanshaw Creek during the summer, low-flow period due to a reduction in the amount of water diversions necessary to maintain the current irrigation, domestic, and power uses<sup>7</sup>. Complaint Unit staff are not currently aware of compelling evidence suggesting that a significant benefit would accrue to instream uses of water by increasing the flow over that currently existing in this reach of the creek during the low-flow period of the year. However, the complainant, DF&G, NMFS, and many interested parties seem to believe that substantial benefit would be gained. Because determining appropriate instream flow needs is not an exact science, providing additional flows might provide some, as yet, undocumented benefits to instream uses. Complaint Unit staff are not aware of any adverse impacts that would occur by increasing instream flows if a physical solution were to be implemented. Erring on the side of public trust uses is always desirable; especially if the rights of consumptive water users can be maintained or enhanced at the same time.

In order to implement a physical solution such as described above, the penstock and powerplant would need to be relocated onto land currently owned by the U.S. Forest Service. The Cole's diversion and conveyance ditch were initiated before the National Forest was established. This has essentially "grandfathered" these facilities and has most likely significantly reduced the amount of regulatory authority the Forest Service has over these facilities. Moving the penstock and powerplant would subject the Coles to additional regulation by the Forest Service. In view of the concerns expressed by the "fishery advocates" including the protests and complaints filed, the Coles are not likely to be willing to enter into a physical solution unless adequate guarantees can be provided that their diversion and use of water would not be placed in any greater jeopardy than currently exists. This might necessitate a land exchange with the Forest Service or development of some other type of legal agreement or contract between the parties.

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<sup>7</sup> - Application 29449 has not yet been approved. Complaint Unit staff assume that any permit that may be issued pursuant to this filing will be conditioned upon compliance with all necessary activities to prevent any unreasonable adverse impacts to instream uses. Consequently, a physical solution would not provide much benefit based strictly upon diversions for power purposes. Most of the benefit would be based on reductions to diversions for irrigation and/or domestic uses.

## **CONCLUSIONS**

1. A court of competent jurisdiction would most likely confirm that the Coles have a valid pre-1914 appropriative right to divert water from Stanshaw Creek for full domestic and irrigation purposes at the Marble Mountain Ranch.
2. Evidence has not been submitted to substantiate a pre-1914 appropriative right for power purposes but A029449, if approved, should cover all diversions for power purposes.
3. With the current irrigation system, most diversions for power purposes during the low-flow periods of the year are incidental to domestic and irrigation needs.
4. Prima facie evidence is available to indicate that lower Stanshaw Creek does provide habitat for "thermal refuge" when temperatures in the Klamath River become detrimental to the health and well being of fish life.
5. Bypasses similar to those present during the field investigation should provide adequate habitat for thermal refuge purposes.
6. Measuring flows on a regular basis in Stanshaw Creek is not practical. Any requirement to measure minimum bypass flows should **not** be established unless the requirement acknowledges that a sufficient diversion of water will be allowed into the Cole's ditch to cover both the diversion and bypass requirement with subsequent measurement and release of bypasses back into the stream.
7. Considerable benefit might accrue to all sides of this dispute if an appropriate physical solution were to be implemented.

## **RECOMMENDATIONS**

1. That the Coles be directed to cease all diversion of water whether pursuant to a pre-1914 appropriative claim of right or post-1914 appropriative rights derived from Application 29449 or Small Domestic Registration D030945R unless sufficient flow is passed below their POD to maintain a flow in lower Stanshaw Creek below the Highway 96 culverts similar to that present during the October 17, 2001, field investigation ( $\approx 0.7$  cfs).
2. That the required bypass flow be determined in one of two fashions:
  - a) if full diversion of the creek into the Cole's ditch is **not** allowed, the flow should be visually estimated so that sufficient flow would be available to fill a small,



hand-dug ditch between the terminal pool of Stanshaw Creek and the Klamath River; or

- b) if full diversion of the creek into the Cole's ditch is allowed, a device shall be installed capable of bypassing sufficient flow to maintain 0.7 cfs in the creek below the Highway 96 culverts before any water is passed down the diversion ditch to Marble Mountain Ranch.
3. That the complaint filed by KFA against the Coles be closed.
  4. That the parties give serious consideration to a physical solution similar to that discussed above.

State of California

Memorandum

To: Mr. Edward C. Anton, Chief  
Division of Water Rights  
State Water Resources Control Board  
Post Office Box 2000  
Sacramento, California 95812-2000

Date: November 20, 2001



From: Donald B. Koch, Regional Manager  
Northern California-North Coast Region  
Department of Fish and Game  
601 Locust Street, Redding, California 96001

Subject: Complaint Investigation Relating to Application 29449 Doug Cole – Stanshaw Creek, Tributary to Klamath River, Siskiyou County

The Department of Fish and Game has reviewed the subject application and attended two site visits with State Water Resources Control Board (Board) staff. The first field investigation was conducted by the Board's application and environmental section on July 26, 2000, and the latest complaint inspection was held on October 17, 2001. On March 17, 2000, we submitted a protest on the application which was accepted by the Board on April 4, 2000. Our protest is based on adverse environmental impacts which could result from reduced flows in Stanshaw Creek. Both the complaint and application refer to an existing unpermitted diversion of water from Stanshaw Creek.

At the time our protest of this application was filed in March 2000, our primary concern was protection of anadromous fish habitat in about a 0.25 mile reach of Stanshaw Creek from the Highway 96 crossing to the stream's confluence with the Klamath River. On April 27, 2001, the California Fish and Game Commission (Commission) accepted a petition to list coho salmon north of San Francisco Bay as an endangered species. Consequently, coho salmon are now considered as a candidate species pursuant to the California Endangered Species Act (CESA). On April 26, 2001, emergency regulations adopted by the Commission pursuant to Fish and Game Code Section 2084 went into effect. These regulations remain in effect during the 12-month candidacy period and authorize the incidental take of coho salmon resulting from diversion of water. The Commission will likely make its final listing decision in early June 2002 and if they decide to list the species, the current Section 2084 incidental-take authorization for water diversions will terminate. After listing, take of coho salmon will be prohibited unless authorized under Fish and Game Code Section 2081(b) or 2080.1. We urge the Board to consider the implications of their actions regarding subject complaint and final decision on water rights application #29449 in light of Fish and Game Code Section 2053 and the potential listing of coho salmon next year.

During the complaint inspection, we were told that the merits of the complaint would be reviewed within 30 days and, therefore, we are submitting these comments and recommendations for the Board's consideration. Formal protest dismissal terms will be submitted to the application unit at a future date.

Mr. Edward C. Anton  
November 20, 2001  
Page Two

Federally Listed coho salmon (*Onchorhynchus kisutch*) are known to exist in Stanshaw Creek. Coho salmon were listed as threatened under the Federal Endangered Species Act effective June 5, 1997, and as a candidate under the California Endangered Species Act on April 27, 2001. On two recent occasions, the Department has collected field information within Stanshaw Creek below the subject diversion in the area near its confluence with the Klamath River. On May 25, 2000, we collected 8 young of the year and 18 yearling steelhead trout in this area of Stanshaw Creek. On July 26, 2000, we sampled and found one juvenile coho salmon in Stanshaw Creek below the culverts which run under Highway 96. We believe the Highway 96 culverts are currently a barrier to upstream migration of fish and have, therefore, focused our concerns and mitigation measures on the 0.25 mile stream reach downstream of these culverts. This stream reach is characterized by deep pools, large woody debris, dense overhanging riparian cover shading the stream and generally cool water temperatures and thus provides good rearing and refuge habitat for juvenile coho salmon and steelhead trout. Coldwater habitats such as those provided by Stanshaw Creek are important refuges for juvenile coho salmon which may need to escape the warmer temperatures and low dissolved oxygen levels occasionally found in the Klamath River during the warm summer and early fall months. However, critical cold water refuge habitats for coho salmon and steelhead in lower Stanshaw Creek need to be accessible to the fish so sufficient water needs to stay in the stream to maintain connectivity to the Klamath River all year.

The Department currently proposes year-round bypass flows of 2.5 cubic feet per second (cfs) to be measured at the culverts below Highway 96 to mitigate potential impacts from the diversion on Stanshaw Creek. Our objective for these flows is to ensure existing instream habitat conditions in Stanshaw Creek for coho salmon and steelhead are maintained, water temperatures remain cold and year-round access to the stream from the Klamath River is guaranteed. To accomplish this objective, we recommend the total stream flow be bypassed whenever it is less than the designated amount. Based on field reviews and best professional judgment, it was determined that 2.5 cfs should maintain connectivity and an adequate channel which allows young salmonids access to Stanshaw Creek from the Klamath River. However, the Department may require additional bypass flows in the future if conditions change such that 2.5 cfs is no longer adequate to allow salmonid passage at the mouth of Stanshaw Creek. Future modification of the barriers or more detailed studies may also indicate a need for higher instream flows.

It is our understanding from discussions with Board staff that water is currently diverted from Stanshaw Creek even when there is not enough flow to run the hydroelectric generators. We believe this procedure results in water being wasted and not being put to beneficial use. This procedure typically occurs during critically dry periods when natural flows are needed to maintain salmonid access from the Klamath River to cooler water, rearing and refuge habitat found in Stanshaw Creek. If the stream flow in Stanshaw Creek is less than the amount needed to run the hydroelectric plant (3 cfs), then water for power generation should not be diverted and the entire natural flow of Stanshaw Creek should be bypassed to maintain the downstream fishery resources.

Mr. Edward C. Anton  
November 20, 2001  
Page Three

During both inspections, various options were discussed which could help satisfy the required downstream flow conditions. We believe two options have merit for the Board and the owner to consider. One option would be returning diverted flows back to Stanshaw Creek after the water is used to generate electricity. Currently, tailwater is discharged to the adjacent drainage of Irvine Creek. Second, improvements to the open ditch system and/or updating the hydroelectric generation system may also allow the applicant to divert less water while still meeting the needs for domestic purposes and electric generation.

If you have any questions or comments regarding this memorandum, please contact Environmental Scientist Jane Vorpapel at (530) 225-2124.

cc: Mr. James R. Bybee  
National Marine Fishery Service  
777 Sonoma Avenue, Room 325  
Santa Rosa, California 95404

Mr. Doug Cole, et al.  
92520 Highway 96  
Somes Bar, California 95568

Ms. Jane Vorpapel  
Department of Fish and Game  
601 Locust Street  
Redding, California 96001



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Southwest Region  
777 Sonoma Avenue, Room 325  
Santa Rosa, California 95404

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29449

November 15, 2001 151416-SWR-01-SR-928:SKL

Mr. Charles Rich, Chief  
Complaints Unit  
State Water Resources Control Board  
Division of Water Rights  
P.O. Box 2000  
Sacramento, California 95812-2000

Dear Mr. Rich:

This letter represents our findings and protest dismissal terms of appropriate water rights application 29449. It is based on a State Water Resources Control Board (SWRCB) field investigation attended by Dr. Stacy Li, National Marine Fisheries Service (NMFS), Mr. Chuck Glasgow (NMFS), and Mr. Tim Broadman and Mr. Dave Rielly (NMFS Law Enforcement) on 17 October 2001 in relation to a complaint of an unpermitted diversion on Stanshaw Creek by Doug and Heidi Cole. The Coles have directly diverted up to 3 cubic feet per second (cfs) from Stanshaw Creek (watershed is approximately 3.2 square miles) the year round (when flows are available) for the purposes of domestic use and hydroelectric generation. The water used for hydroelectric generation is diverted into Irving Creek in an adjacent watershed. Irving Creek is also tributary to the Klamath River. The Coles have applied for appropriate rights for the hydroelectric use, but have pre-1914 rights for domestic use. The amount of the pre-1914 use is approximately 0.5 cfs.

NMFS is interested in this project because the Klamath River watershed supports federally threatened Southern Oregon/Northern California coasts Evolutionarily Significant Unit (ESU) of coho salmon (*Oncorhynchus kisutch*).

### Existing Project

Typically each year the Coles must manually construct a structure of cobbles and boulders to divert water from Stanshaw Creek. The unscreened diversion delivers water via an earthen ditch approximately 1-foot deep, 2-feet wide, and 5200 feet long. The penstock is a steel pipe 16-inches in diameter and 455 feet long. A head of 200 feet is used to generate a maximum of 33.9 kilowatts with a Pelton wheel. Water not consumed by domestic use is returned to the Klamath River via



000617

Irving Creek. With the diversion active, approximately a mile of Stanshaw Creek has reduced flows; this reach is well shaded by topographic features as well as a thick canopy coverage of about 60%. About 1/4 mile of Irving Creek has augmented flows from Stanshaw Creek.

Stanshaw Creek enters the Klamath mainstem near River Mile (RM) 76. Irving Creek also enters the Klamath mainstem near RM 75. Stanshaw Creek has a smaller watershed than Irving Creek. While both streams are not gauged, the few measurements of Irving Creek and Stanshaw Creek during the summer suggest a summer base flow in Irving Creek as more than double (7 cfs vs. 3 cfs) that of Stanshaw Creek. Both streams provide cooler water than the mainstem Klamath River during the summer. Because water temperatures during the summer in the mainstem Klamath River are stressful to salmonids, it is likely that rearing juvenile anadromous salmonids use each tributary as a thermal refuge. California Department of Fish and Game collected juvenile coho salmon and steelhead with a backpack electrofisher in the portion of Stanshaw Creek 100 yards downstream of Highway 96 in July 2000. There is a culvert under Highway 96 on Stanshaw Creek that may limit anadromous fish access to upstream reaches.

The culvert under Highway 96 at Stanshaw Creek is listed on resource agencies master list for culverts with passage problems. CalTrans has stated that they will replace the culvert in the future to allow salmonid passage.

At the site we reviewed the project, examined the point of diversion (POD), the flume, the penstock, the reach downstream of the POD, and the reach of Stanshaw Creek between Highway 96 and the Klamath River.

### **Terms to Remove Protest**

NMFS finds that the following conditions are necessary and sufficient to remove our protest:

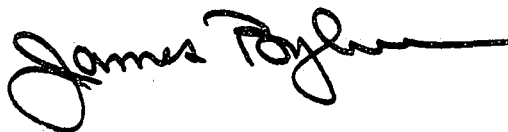
- a) Diversion Intake: Limit diversion flow to a maximum of 3 cfs. The applicant proposes to divert a maximum of 3 cfs, but the existing intake has no provision to control the amount of flow diverted. There are a variety of methods of controlling flow including: head gates with adjustable undershot weir, notched weir, orifice, dimensional flume, and the like (See Bureau of Reclamation 1997).
- b) Fish screen: The existing diversion is not adequately screened to prevent entrainment. Any diversion should be adequately screened. We saw an 8" salmonid in the flume during the field investigation. The fish screen should follow NMFS/CDFG fish screen criteria. However, these fish screen criteria were developed with large diversions in mind. There may be adequate screening alternatives for smaller diversions such as this one. Please contact Mr. Richard Wantuck, NMFS (707) 575-6063 for technical advice regarding fish screens in small drainages.
- c) Return flow: Return the diverted flow from Stanshaw Creek back to Stanshaw Creek instead of to Irving Creek. Thermal refugia during the summer is an important habitat element in the Klamath River. It is our belief that diverted flow returned to Stanshaw Creek will provide necessary cold water to provide a thermal refuge at the mouth of Stanshaw Creek without compromising the thermal refuge on Irving Creek. During the field investigation, Mr. Cole ,

the applicant, stated that we would be willing to move the hydroelectric generating plant so that the tail race flow would return to Stanshaw Creek. The new return would be located on Stanshaw Creek upstream of Highway 96.

- d) Bypass flows: This is based upon the assumption that 3 cfs is a representative summer base flow. The nature of the point of diversion precludes precise bypass flows due to leaf fall or debris accumulation. However, bypass flows are of major concern only at low flows, i.e., 3 cfs. We believe that there is ample canopy that keeps the stream cool downstream of the POD provided that most of the flow is in Stanshaw Creek during low flow periods. Therefore, we recommend that a minimum bypass flow of 1.5 cfs be maintained at all times downstream of the POD. This bypass flow represents 50% of the summer base flow. This bypass flow recommendation assumes tailwater from the hydroelectric plant will be returned to Stanshaw Creek. Therefore, the thermal refuge downstream of Highway 96 will be maintained. This bypass flow recommendation may be modified when CalTrans provides salmonid passage through the Highway 96 culvert. The applicant must install and maintain permanent staff gages at the point of diversion to allow monitoring and facilitate release of bypass flows. Alternatively, the applicant may perform a comprehensive biological and hydrological study to identify an alternate biologically based bypass flow.
- e) Monitoring: Regardless of the quality of stream at the point of diversion, the proposed project should provide California Department of Fish and Game personnel access to all points of diversion and places of use for the purpose of conducting routine and or random monitoring and compliance inspections.

Thank you for your cooperation in the above. We look forward to continued opportunities for NMFS and the State Water Resources Control Board to cooperate in the conservation of listed species. If you have any questions or comments concerning the contents of this letter please contact Dr. Stacy K. Li at (707) 575-6082.

Sincerely,



James R. Bybee  
Habitat Manager  
Northern California


cc: Doug and Heidi Cole  
Irma Lagomarsino, PRD, NMFS, Arcata  
Tim Broadman, Law Enforcement, NMFS, Arcata



# State Water Resources Control Board

**Winston H. Hickox**  
Secretary for  
Environmental  
Protection

**Division of Water Rights**  
1001 I Street, 14<sup>th</sup> Floor • Sacramento, California 95814 • (916) 341-5307  
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000  
FAX (916) 341-5400 • Web Site Address: <http://www.swrcb.ca.gov>  
Division of Water Rights: <http://www.waterrights.ca.gov>

WR-5  
REM  
  
**Gray Davis**  
Governor

**SEP 20 2001**

To Attached Mailing List

The Division of Water Rights (Division) received a complaint against Doug and Heidi Cole on June 18, 2001, lodged by Don Mooney, legal counsel representing the Klamath Forest Alliance (KFA). On August 20, 2001, an Answer to Complaint was received from Janet Goldsmith, legal counsel for the Coles. Based on a short telephone discussion with Mr. Mooney prior to him leaving on vacation, we do not believe that Ms. Goldsmith's response adequately resolves the complaint filed on behalf of the KFA. Therefore, unless notified to the contrary, the next step in the complaint process is to schedule a field investigation.

We propose to conduct this investigation on **Wednesday, October 17, 2001**. We would like to have all interested parties meet at the Marble Mountain Ranch at 9:00 a.m. on that date. Because the issues raised by KFA relate to the health and well being of anadromous fish, we would appreciate the participation of representatives from the National Marine Fisheries Service and the California Department of Fish and Game. We will be inspecting both Stanshaw Creek below the point of diversion and Irving Creek below the point where diverted water is released to this creek. Because the ditch heads on Forest Service property, we would also appreciate the participation of a representative from the U.S. Forest Service. If these agencies do not participate in this investigation or make other arrangements for their input, we will assume that they have no position or interest in this matter.

If this date is unworkable for any party, please let me know what alternate dates are better. However, Division staff believe that this investigation must be conducted before the onset of winter rains. Therefore, we are not willing to postpone this investigation beyond October 26th.

Please let me know if you intend to participate in the October 17<sup>th</sup> investigation, or if some other date/time during that week would be preferable. I can be reached by telephone at (916) 341-5307, or by e-mail at [mcontreras@waterrights.swrcb.ca.gov](mailto:mcontreras@waterrights.swrcb.ca.gov).

Sincerely,

ORIGINAL SIGNED BY

Michael Contreras

Attachment

***California Environmental Protection Agency***

*"The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>."*

000620



## Mailing List

Kronick, Moskovitz, Tiedemann & Girard  
Attention Ms. Janet Goldsmith  
400 Capitol Mall, 27<sup>th</sup> Floor  
Sacramento, CA 95814-4416

Mr. Don Mooney  
129 C Street, Suite 2  
Davis, CA 95616

National Marine Fish Service  
Santa Rosa Field Office  
Attention Ms. Margaret Tauzer  
777 Sonoma Avenue, Room 325  
Santa Rosa, CA 95404

Department of Fish and Game  
Environmental Services  
Attention Dennis Maria  
Attention Ron Prestly  
601 Locust Street  
Redding, CA 96001

U.S. Department of Agriculture  
Orleans Ranger District  
Attention Bill Heitler, District Ranger  
P.O. Drawer 410  
Orleans, CA 95556-0410

bcc: REM

MContreras\lfischer  
D:\mc\Cole site visit 9/19/01

***California Environmental Protection Agency***

*"The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.  
For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>."*

000621



# State Water Resources Control Board



**Division of Water Rights**  
1001 I Street, 14<sup>th</sup> Floor • Sacramento, California 95814 • (916) 341-5307  
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000  
FAX (916) 341-5400 • Web Site Address: <http://www.swrcb.ca.gov>  
Division of Water Rights: <http://www.waterrights.ca.gov>

**Winston H. Hickox**  
Secretary for  
Environmental  
Protection

**Gray Davis**  
Governor

FILE  
29449

**JUL 02 2001**

Mr. Doug and Ms. Heidi Cole  
92250 Highway 96  
Somes Bar, California 95568

Dear Doug and Heidi:

## WATER RIGHTS COMPLAINT SUBMITTED BY THE KLAMATH FOREST ALLIANCE ALLEGING UNREASONABLE DIVERSION

The State Water Resources Control Board's (SWRCB) Division of Water Rights has received a complaint on behalf of the Klamath Forest Alliance (KFA) regarding your diversion of water from Stanshaw Creek, a tributary to the Klamath River. In a letter from their attorney, your water rights are questioned and it is alleged that your diversion is unreasonable in that it compromises the downstream fishery.

Enclosed for your review is a copy of the June 14, 2001 letter, an "Answer to Complaint" form, and an information pamphlet. Please use the form to respond to the allegations within 15 days from the date of this letter. Upon receipt of your responses, all items submitted by each party will be evaluated to determine whether further action is required by the SWRCB.

If you have any questions regarding this matter, please contact me at (916) 341-5307.

Sincerely,

ORIGINAL SIGNED BY

Michael Contreras  
Complaint Unit

Enclosures

cc: See next page.

**California Environmental Protection Agency**

*"The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>."*

000622

Doug and Heidi Cole

2

cc: Department of Fish and Game  
Environmental Services  
c/o Mr. Ron Prestly  
601 Locust Street  
Redding, CA 96001

William M. Heitler, District Ranger  
U.S. Department of Agriculture  
Orleans Ranger District  
P.O. Drawer 410  
Orleans, CA 95556-0410

National Marine Fisheries Service  
Santa Rosa Field Office  
Attention Tim Broadman  
Attention Margaret Tauzer  
777 Sonoma Avenue, Room 325  
Santa Rosa, CA 95404

*BUDGETA  
FIELD OFFICE*

Mr. Jim De Pree  
Siskiyou County Planning Department  
P.O. Box 1085  
Courthouse Annex  
Yreka, CA 96097

Mr. Konrad Fisher  
3210 Klinge Road NW  
Washington, D.C. 20008

Robert E. and Mary J. Young  
c/o Thomas W. Birmingham  
770 L Street, Suite 1200  
Sacramento, CA 95814

*NO LONGER INVOLVED  
IN PROJECT*

Law Offices of Donald B. Mooney  
129 C Street, Suite 2  
Davis, CA 95616

bcc: Robert E. Miller (REM)

Mcontreras\lfischer  
D:\mc\cole 6/29/01



# State Water Resources Control Board

29449  
SURNAME

## Division of Water Rights

1001 I Street, 14<sup>th</sup> Floor • Sacramento, California 95814 • (916) 341-5300  
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000  
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**Winston H. Hickox**  
Secretary for  
Environmental  
Protection

**Gray Davis**  
Governor

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>.*

**JUN 22 2001**

Mr. Konrad Fisher  
3210 Klingle Road NW  
Washington D.C. 20008

Dear Mr. Fisher:

APPLICATION 29449 OF DOUG COLE ET. AL. TO DIVERT 3.0 CUBIC FEET PER SECOND (CFS) OF WATER FROM STANSHAW CREEK TRIBUTARY TO KLAMATH RIVER IN SISKIYOU COUNTY FOR GENERATION OF 33.9 KILOWATTS OF ELECTRICITY

Per our phone conversation on 21 June, 2001, I have enclosed text, tables, and a map from the May, 1965 bulletin authored by the Department of Water Resources (DWR) entitled "Land and Water Use in the Klamath River Hydrographic Unit" (Bulletin No. 94-6) that is pertinent to the above mentioned application. As you will see in Table 4 on page 58 of the copied report, the type of apparent water right is incorrectly listed as riparian. Page 31 states, "Those [diversions] which have been neither adjudicated nor based on appropriations [water right applications or pre-1914 appropriations], but for which the area of use is apparently riparian to the streams or which the owner claims to be riparian are listed as 'riparian.'" Either DWR incorrectly came to this conclusion or the owner incorrectly stated that it was a riparian right. It is interesting here to note that neither the owner at the time, L.H. Hayes, nor the previous owner, McMertree, listed this right as a pre-1914 appropriation even though the indicated date of first use on the table is "About 1800."

As you will also see in the enclosures, 362 acre-feet (af) was *measured* at the nozzle in 1958; this would be the amount of water that was put to beneficial use. This calculates to a daily average beneficial use of:

$$362 \text{ af/yr} \div 365 \text{ days/yr} = 0.99 \text{ af/day}$$
$$0.99 \text{ af/day} \div 1.98 \text{ af/day/cfs} = \mathbf{0.50 \text{ cfs}}$$

Average instantaneous flow per month could also be calculated using data from Table 5. Small domestic use is not calculated in this figure, although that would be negligible at less than 10 af/yr. I also assume that seepage losses are not figured into this since this is measured at the nozzle rather than the point of diversion, but I would not expect seepage losses to nearly approach 2.5 cfs.

*RCM*  
6/22/01

Mr. Konrad Fisher

2

JUN 22 2001

Please also note that: 1) 1958 was an "unusually wet year," with Klamath River flows nearly double that of the average annual flow, and 2) 6 kilowatts of electricity were generated by the diversion in question. Hence, an average rate of 0.5 cfs through the nozzle was probably all that was needed to generate 6 kilowatts, and this lower rate was not the result of low flows available for diversion from Stanshaw Creek.

If I can be of further assistance, please call me at (916) 341-5392.

Sincerely,

**ORIGINAL SIGNED BY:**

Robert E. Miller  
Environmental Specialist II  
Environmental Review Unit 2

Enclosures

bc: MC

RMILLER:llv 06/22/2001  
u:\envirodrv\rem\29449 letter to fisher

REM

**To: Rob Miller**  
**From: Konrad Fisher**  
**Re: Response to SDN Stanshaw Article**

If there is anything other than the 1965 Water Board docs I that would be appropriate attachments to this letter, or beneficial to my PR effort, please let me know.

Best,  
 Konrad Fisher  
 See Fax and E-mail address on letter

STATE WATER RESOURCES  
 CONTROL BOARD  
 01 JUN 21 PM 4: 33  
 DIV. OF WATER RIGHTS  
 SACRAMENTO

WR-5

**KONRAD FISHER**

3210 Klinge RD NW, Washington DC, 20008  
Tel.: 202.625.6421; Fax: 435.514.0937; konradfisher@yahoo.com

June 25, 2001

Siskiyou Daily News  
c/o: Lori Sellstrom  
P.O. Box 129  
Yreka, CA 96097

01 JUN 21 PM 4: 33  
DIV. OF WATER RIGHTS  
SACRAMENTO

STATE WATER RESOURCES  
CONTROL BOARD

To Whom It May Concern:

I call your attention to an article entitled "Lawsuit threatens resort" that appeared in the April 3, 2001 issue of the Siskiyou Daily News on pages 1 and 3. A copy of the article is attached as Exhibit A and made a part hereof.

A series of misleading or false statements contained in the article reveal a reckless disregard for the truth and portray me in a false light. They lead the reader to believe that I am a disinterested party and that I have acted in a malicious manner. Pursuant to applicable federal and state laws, including California Civil Code Section 48(a), I demand that a correction of the following statements be published in substantially as conspicuous a manner as the statements appeared.

The statement in the 3<sup>rd</sup> paragraph that Stanshaw Creek is on Forest Service land is misleading. Although it is true for the upper portion of Stanshaw Creek, the portion of the creek from Highway 96 to its confluence with the Klamath River is on land owned by my family.

The 7<sup>th</sup> and 8<sup>th</sup> paragraphs falsely imply that Mr. Stanshaw's original land claim now comprises the Marble Mountain Ranch. In the 10<sup>th</sup> paragraph, you clearly convey that Mr. Stanshaw's original claim now belongs to the Coles. If you have seen the records to which you referred in the 7<sup>th</sup> paragraph, and on which you based subsequent assumptions, you know that Stanshaw's original mining claim was comprised, at least in part, of land now owned by my family.

The 7<sup>th</sup> and 8<sup>th</sup> paragraphs also falsely imply that the water rights accompanying Stanshaw's claim became a deeded part of the Marble Mountain Ranch. The 18<sup>th</sup> paragraph clearly confirms your intent to convey that the Coles have "a deeded right to the water" that accompanied Stanshaw's claim.

If the Coles possessed a "deeded right to the water," it would probably say so in their deed. The Cole's deed, [attached as Exhibit B], states only, "Together with all water rights appurtenant thereto," and in no way shows that the Coles are successors in interest to Stanshaw's water rights.

Furthermore, in a September 25, 1998 letter to Mr. Cole from Harry M. Schueller, chief of the State Water Resources Control Board's Division of Water Rights, [attached as Exhibit C], Mr. Schueller states that the Coles have submitted no information to suggest that Stanshaw's water rights pertained to the Marble Mountain Ranch.<sup>1</sup>

<sup>1</sup> As of September of 1998, the State Water Resources Control Board's Division of Water Rights tentatively accepted that Stanshaw's water right applies to the Coles' property. To my knowledge, the Board was unaware of the evidence to the contrary, which I have put forth to you. The Board concluded however, that any diversion in excess of .49 cfs would require evidence to refute the May 1965 Department of Water Resources' bulletin entitled "Land and Water Use in the Klamath River Hydrographic Unit" (Bulletin No. 94-6), and the testimony of Forest Service Hydrologist, Marvin Gross, both of which indicated that the water consumption of the Coles' post-1914 predecessors did not exceed .49 cfs.

Finally, it should be noted that former water diversion ditches, pipes and large rock piles indicate that the large scale mining and water consumption took place on land now owned by my family, not the Coles, and that Stanshaw Creek itself flows through my family's property, not the Coles'.

Also misleading is your statement in the 12<sup>th</sup> paragraph that "there is no concrete dam structure at the diversion on Stanshaw Creek." Although the portion of the diversion structure in the creek is comprised of rocks and plastic, the head gate to the diversion structure is constructed of concrete, and is, for all intents and purposes, part of "the diversion on Stanshaw Creek." The undated site visit statement by Ranger Heitler, [attached as Exhibit D], will confirm my assertions, as should your recollection of your site visit.

Your statement in the 12<sup>th</sup> paragraph that "there is no 'new' water diversion" is misleading given the fact that the Coles are currently illegally diverting, and wish to legally divert, more water than their predecessors. Exhibit C indicates that the Coles' predecessors diverted between .11 and .49 cubic feet per second (cfs) of water, yet the Coles are applying for a right to divert 3 cfs of water. ~~And on the first page of the Coles' water rights application, [attached as Exhibit E], the Coles have replaced their immediate predecessors' names, (the Youngs), with their own, and have replaced the Youngs' request for 1 cfs for "fish enhancement," (probably pond construction or legalization), with their request for 3 cfs for "hydroelectric."~~

The 23<sup>rd</sup> paragraph falsely states that Doug Cole invited government representatives and "even Conrad Fisher to a meeting at the ranch." This meeting at the Marble Mountain Ranch was part of a site visit arranged by government officials, and I, Konrad Fisher, had to invite myself.

Especially false and misleading are the numerous statements which together imply that through the notice of intent to sue, and through my "active role in preventing [the Coles] from getting the permit," (19<sup>th</sup> paragraph), I threatened the Cole's "very existence," (3<sup>rd</sup> paragraph), and I caused the Coles to go without water and consequently brought hardship to their son, (27<sup>th</sup>-43<sup>rd</sup> paragraphs).

The Coles' ability to run a successful resort, much less their very existence, is not contingent upon their ability to divert 3 cfs of water from Stanshaw Creek. This is evidenced by the facts established in Exhibits C and D respectively, that, 1) the Cole's predecessors, who ran a successful businesses on the Marble Mountain Ranch, diverted less than 0.49 cfs of water, and, 2) ~~the Coles' immediate predecessors requested 1 cfs in their water rights application, not 3.~~ The Coles predecessors' not only functioned with a fraction of the water, but, (assuming your statement in the 16<sup>th</sup> paragraph is correct), functioned with a very inefficient "pre-1912 water wheel." It should also be noted that on the day of the aforementioned site meeting, the Coles were producing power not with their hydroelectric plant but with their diesel generator.

Moreover, the notice of intent to sue is just one of many threats to the Coles' frivolous use of water. The Coles have been involved in a fruitless multi-year deliberation with the State Water Resources Control Board and the Department of Fish and game to legalize their illegal diversion of water, (see exhibit C). And long before the notice of intent to sue was sent, the Coles' application to appropriate 3 cfs of water was officially protested by numerous parties other than me. These include the National Marine Fisheries Service, the Department of Fish and Game, J. W. Fisher Logging Company and the California Sport Fishing Protection Alliance.



More importantly, the implication that I brought harm to Mr. and Mrs. Cole, and particularly to their son, is based on the false and unfounded assumption that the Coles have gone without water for extended periods of time. Your reckless disregard for the truth is evident in your reliance on this false assumption from the 27<sup>th</sup> to the 43<sup>rd</sup> paragraphs, and is especially evident in the 40<sup>th</sup> paragraph in which you state as fact that the Coles suffered "last fall and winter" without water.

Although the Department of Fish and Game required that the Coles' diversion allow fish passage, they have not, as you imply in the 27<sup>th</sup> paragraph, enforced the laws that relate to the actual amount of water diverted. It is possible that the Coles' noncompliance prompted the Department of Fish and Game to alter the diversion to allow fish passage, and that in the process, they redirected water away from the ditch. If this was the case, the Coles were free to immediately alter the diversion structure so that it allowed fish passage and still diverted water into their ditch. This is precisely what someone did.

Not a month went by last winter or fall without Mike Fellows, a resident of my family's property, and / or me, visiting the Coles' diversion. During each visit, one or both of us observed that 1/2 to 2/3 of Stanshaw Creek's flow was being diverted into the Coles' ditch. During my most recent visit to the diversion on the 22<sup>nd</sup> of last month, I observed, as I had during previous visits, that there was a path through the diversion structure and that approximately 60-75% of Stanshaw Creek's flow was being diverted into the Coles' ditch. Mr. Fellows observed the same approximately 10 days later and then again on Wednesday, June 20.

The 46<sup>th</sup> paragraph falsely implies that you made an effort to contact my attorney, Donald Mooney, and me before publishing your article. Neither of us received a phone call, a letter or an E-mail. The notice of intent to sue, which is the very premise of your article, bears Mr. Mooney's phone number, physical address and E-mail address on the first page. You drove by the mailbox to my family's property on your way to and from the Marble Mountain Ranch. You could have utilized any number of methods to contact us, but you chose not to.

Your almost exclusive reliance on the Coles' unsupported statements, your failure to acknowledge the conflict between these statements and the information contained in publicly available documents and your failure to contact my lawyer or me, represents a reckless disregard for the truth and resulted in an article that portrays me in a false light in a county which I consider home and will one day reside. I therefore demand that a correction of all aforementioned misleading or false statements be published in substantially as conspicuous a manner as the statements appeared.

Sincerely,

Konrad Fisher

Enclosures

cc:

\_\_\_\_\_  
Publisher  
Siskiyou Daily News  
P.O. Box 129  
Yreka, California 96097

# MESSAGE CONFIRMATION

02/09/2001 12:02

DATE	S.R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT
02/09	02'15"	7077623688	CALLING	03	OK 0000

02/09/2001 12:00

NO. 525 001

State Water Resources Control Board  
 Division of Water Rights  
 P. O. Box 2000  
 Sacramento, CA 95812-2000  
 Phone: (916)341-5300  
 FAX: (916)341-5400

## facsimile transmittal

To: MR. JEFF HARRIMAN Fax: (707) 762-3688

---

From: ROB MILLER Date: 2/9/2001

---

Re: KLAMATH / TOCHER Pages: 3 (INCLUDING COVER)

---

CC:

Urgent  For Review  Please Comment  Please Reply  Please Recycle

AS I SAID ON THE PHONE, I DID SPEAK  
 ... .. A.C.D. He

State Water Resources Control Board  
 Division of Water Rights  
 P. O. Box 2000  
 Sacramento, CA 95812-2000  
 Phone: (916)341-5300  
 FAX: (916)341-5400

# facsimile transmittal

To: MR. JEFF HARRIMAN      Fax: (707) 762-3688  
 From: ROB MILLER      Date: 2/9/2001  
 Re: KLAMATH / TOCHER      Pages: 3 (INCLUDING COVER)  
 CC:

Urgent     For Review     Please Comment     Please Reply     Please Recycl

AS I SAID ON THE PHONE, I DID SPEAK WITH MR. TOCHER A FEW WEEKS AGO. HE EXPLAINED HIS DIVERSIONS AND ASKED THAT WE RESEND THE 12/15/2000 LETTER THAT IS ATTACHED. HE MAY HAVE A LEGAL BASIS FOR SOME OF HIS WATER DIVERSIONS AND USE, BUT NONETHELESS, HE NEEDS TO FILE A STATEMENT WITH THE SWRCB FOR THEM. ALSO, HE IS ILLEGALLY STORING WATER IN THE RESERVOIR AND DIVERTING FOR POWER GENERATION. HE, OR YOU, WILL NEED TO FILE 2 APPLICATIONS TO APPROPRIATE FOR THAT. CALL ANYTIME... SORRY I DIDN'T GET BACK TO YOU SOONER.

ROB MILLER

CONFIDENTIAL



# State Water Resources Control Board



**Winston H. Hickox**  
Secretary for  
Environmental  
Protection

**Division of Water Rights**  
1001 I Street, 14<sup>th</sup> Floor • Sacramento, California 95814 • (916) 341-5300  
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000  
FAX (916) 341-5400 • Web Site Address: <http://www.swrcb.ca.gov>  
Division of Water Rights: <http://www.waterrights.ca.gov>

**Gray Davis**  
Governor

In Reply Refer  
to: 331:YM:266.0

**DEC 15 2000**

Mr. G. Neil Tocher  
1903 Park Marina Drive  
Redding, CA 96001

Dear Mr. Tocher:

## WATER RIGHTS APPLICATION, SISKIYOU COUNTY

It was nice meeting you on July 26, 2000 during our field review of Mr. Cole's project. Thank you for your input and tour of your property and water diversion facilities.

Mr. Cole diverts Stanshaw Creek water for hydroelectric power generation. The water flows through his power plant, then to Irving Creek. Before the water is discharged to Irving Creek, you use the water for power generation and irrigation.

Unfortunately, we have no record of water rights to cover your project. Diversion and use of water must have a valid basis of right, therefore, we have enclosed an application packet to apply for water rights.

Your small hydro system is year round continuous use, not incidental to the consumptive water use. Therefore, in accordance with California Code of Regulations, Section 686 (copy enclosed), you need two applications; one for power purposes and one for consumptive uses.

If you need any help in filing out the forms, please call me at (916) 341-5362.

Sincerely,

ORIGINAL SIGNED BY:

Yoko Mooring  
Sanitary Engineering Associate  
Application Unit

Enclosures

bcc: Chuck Rich

YMooring:ym/tvonrotz:12-12-00/u:/ym/Tocher

000632

EAS

**From:** Yoko Mooring  
**To:** Robert E. Miller  
**Date:** 1/8/01 10:09AM  
**Subject:** Re: Related to A029449 (Doug Cole, Stanshaw Creek, Siskiyou County)

Rob:

It took a long time but finally a letter to Mr. Tocher went out on 12/15/2000. I told him that he needed to file two separate applications per Section 686 of Code of Regulations; one for small hydro and one for consumptive use. Today is my first day back from vacation and I haven't seen any response. As you said, this may go to Enforcement Unit soon. Yoko

>>> Robert E. Miller 01/02/01 12:42PM >>>  
Yoko,

Neil Tocher, the landowner using water off Mr. Cole's ditch for irrigation, hydroelectric generation, recreational reservoir, and domestic uses, has put his land up for sale. A prospective buyer has called me to inquire about Mr. Tocher's water rights (that's a first!). Apparently, Mr. Tocher has advised the prospective buyer (Mr. Jeff Harriman) that he already has secured the necessary water rights and also claimed riparian rights. This is not the case b/c Mr. Tocher:

1. has not filed an Application (and hence, not obtained a Permit nor License)
2. has not filed a Statement (definitely not valid for storage reservoir anyhow).
3. diverts water from a man-made ditch (so it's not Riparian). *-that is not riparian to Tocher property*

I advised the prospective buyer that the source coming from Stanshaw Creek is not reliable (Cole's app may be canceled), and that he would have to file an Application for the reservoir, and may be able to claim Riparian Rights for irrigation, hydro power, and domestic uses if he uses Irving water. I also mentioned that if he plans to divert from Irving Creek, he will have to get a DFG 1600 agreement. If he moves his POD high enough in Irving to create enough head for the hydro power, he will be on Forest Service property. He will then need to secure an easement from the USFS and a permit to alter a stream channel on USFS property. The USFS would probably have to prepare a NEPA document. I also advised that NMFS would be involved in his permitting process (both through USFS and as a probable protestant to an Application filed with the SWRCB).

If we have not done so already, I recommend that we send a letter ASAP to Mr. Tocher advising him to file an Application and Statement for his currently illegal diversions. I don't want Mr. Tocher to slip his land to Mr. Harriman or other buyer without full disclosure and something in our records showing that we know of, and that Mr. Tocher knows of, his wrong doing (Mr. Cole purchased the property relating to 29449 in 1994 thinking water rights were secured).

If you'd like, I can draft up report for you on what I know of Mr. Tocher's project. Also, let me know if this issue should be redirected to our Enforcement Section. Thanks.

\*\*\*\*\*

Robert E. Miller  
Environmental Specialist II  
Division of Water Rights  
1001 I Street, Sacramento, CA  
(916) 341-5392

**CC:** Ross Swenerton

**From:** Robert E. Miller  
**To:** Yoko Mooring  
**Date:** 1/2/01 12:42PM  
**Subject:** Related to A029449 (Doug Cole, Stanshaw Creek, Siskiyou County)

Yoko,

Neil Tocher, the landowner using water off Mr. Cole's ditch for irrigation, hydroelectric generation, recreational reservoir, and domestic uses, has put his land up for sale. A prospective buyer has called me to inquire about Mr. Tocher's water rights (that's a first!). Apparently, Mr. Tocher has advised the prospective buyer (Mr. Jeff Harriman) that he already has secured the necessary water rights and also claimed riparian rights. This is not the case b/c Mr. Tocher:

- 1. has not filed an Application (and hence, not obtained a Permit nor License)
- 2. has not filed a Statement (definitely not valid for storage reservoir *anyhow*)
- 3. diverts water from a man-made ditch (so it's not Riparian). *from 2 different watershed*

I advised the prospective buyer that the source coming from Stanshaw Creek is not reliable (Cole's app may be canceled), and that he would have to file an Application for the reservoir, and may be able to claim Riparian Rights for irrigation, hydro power, and domestic uses if he uses Irving water. I also mentioned that if he plans to divert from Irving Creek, he will have to get a DFG 1600 agreement. If he moves his POD high enough in Irving to create enough head for the hydro power, he will be on Forest Service property. He will then need to secure an easement from the USFS and a permit to alter a stream channel on USFS property. The USFS would probably have to prepare a NEPA document. I also advised that NMFS would be involved in his permitting process (both through USFS and as a probable protestant to an Application filed with the SWRCB).

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If you'd like, I can draft up report for you on what I know of Mr. Tocher's project. Also, let me know if this issue should be redirected to our Enforcement Section. Thanks.

\*\*\*\*\*

Robert E. Miller  
Environmental Specialist II  
Division of Water Rights  
1001 I Street, Sacramento, CA  
(916) 341-5392

**CC:** Dennis Maria; Margaret Tauzer; Ross Swenerton; Tim Broadman

*JEFF HARRIMAN'S PHONE # IS (707) 762-8713*



CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION

731 K Street, Third Floor • Sacramento, CA 95814 • (916) 443-2017

WR-5

~~FILE~~  
29449  
FILE

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Riverside County

November 9, 2000

NOVEMBER 21 2000

Robert E. Miller  
P.O. Box 2000  
Sacramento, CA 95812

Re: *People v. Douglas Taylor Cole, Marble Mountain Ranch*

Dear Mr. Miller:

BOARD OF DIRECTORS

STEVEN C. BOLEN  
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EXECUTIVE DIRECTOR  
LAWRENCE G. BROWN

Enclosed are reports and copies of photos in the abovementioned matter, per your telephone conversation this morning with Larry Allen. If you have any questions, please do not hesitate to contact our office at 530 226-0572. Thank you.

Truly yours,

LAURIANNE SWIKERT  
Administrative Assistant  
Environmental Prosecutions Unit

encl.

AMS

CALIFORNIA DEPARTMENT OF FISH & GAME

MISDEMEANOR

AB019404

FG-900

Traffic Nontraffic

Date of Violation 09/03/00 Time 12:00 AM Day of Week SUN Case No.

Name (First, Middle, Last) DOUGLAS TAYLOR COLE Owner's Responsibility (Veh. Code, § 40001)

Address 92520 HWY 96

City SOMES BAR CA. State Zip Code 95568

Driver's Lic. No. E0650990 State CA. (NIP) Birthdate 07/28/54 Telephone No. (530) 469-3322

Sex M Hair BRN Eyes HZL Height 6'0" Weight 180 Other Description WMA

Veh. Lic. No. N/A State Commercial Vehicle (Veh. Code, § 15210(b))

Yr. of Veh. N/A Make N/A Model N/A Body Style N/A Color N/A Hazardous Material (Veh. Code, § 353)

Registered Owner or Lessee N/A Same as Driver

Address N/A Same as Driver

City N/A State Zip Code

Evidence of Financial Responsibility N/A

Correctable Violation (Veh. Code, § 40610) Booking Required

- 1) FE & G CODE SEC. 5901 - "BLOCK OR IMPED E FISH PASSAGE"
2) FE & G CODE SEC. 1603(d) - "VIOLATION OF STREAM ALTERATION AGREEMENT"

Speed Approx. N/A P.F. Max N/A Veh. Lmt. N/A Evidence Seized NONE PHOTOS TAKEN

Location of Violation(s) at STANSHAW CREEK / SISKIYOU COUNTY

Violations not committed in my presence, declared on information and belief. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date 10/02/00 Brian S. Boyd 502 Arresting or Issuing Officer Serial No. Vac. Dates

Arresting or Issuing Officer, if different from Issuing Officer Serial No. Vac. Dates

WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE INDICATED BELOW. FORMAL COMPLAINT REQUEST

Signature WHEN: Date: TBN Time: AM PM

WHAT TO DO: FOLLOW THE INSTRUCTIONS ON THE REVERSE. WHERE: (Court) SISKIYOU SUPERIOR COURT

(Division) YREKA # 47690 (Street Address) (Phone No.)

- To be notified You may arrange with the clerk to appear at a night session of the court.



\* A B 0 1 9 4 0 4 \*

COURT COPY

SEE REVERSE TR-130



# ARREST/INVESTIGATION REPORT

WPD 6a (10-98)

Region # NCNCR

Page 1 Of 2

DATE OF INCIDENT/OCCURRENCE 09/03/00		TIME (2400) 1200	CITY/COUNTY/JUDICIAL DISTRICT Stanshaw Creek / Siskiyou County / Happy Camp District	
"X" ONE <input type="checkbox"/> Arrest Report <input checked="" type="checkbox"/> Formal Complaint	"X" ONE <input type="checkbox"/> Self Initiated <input checked="" type="checkbox"/> Complaint	TYPE OF REPORT ("X" APPLICABLE) <input type="checkbox"/> Commercial Fishing <input type="checkbox"/> Hunting <input type="checkbox"/> Inland Pollution <input type="checkbox"/> CalTIP <input type="checkbox"/> Recreational Fishing <input type="checkbox"/> Trapping <input type="checkbox"/> Marine Pollution <input checked="" type="checkbox"/> Other: 1603		

## Suspect Information

Name Suspect #1 (First, Middle, Last) Douglas Taylor COLE		Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F	Date of Birth (MM/DD/YY) 07/28/54	Citation Number AB019404
Suspect Address (Street, Apt., City, State, Zip Code) 92520 Hwy 96, Somes Bar, Ca. 95568				Home Phone (530) 469-3322
Business Address (Street, Apt., City, State, Zip Code)				Business Phone ( ) None
Identification Type ("X" APPLICABLE) <input checked="" type="checkbox"/> CDL/CID <input type="checkbox"/> Other State DL/ID <input type="checkbox"/> Other ID: _____ Number: E0650990 (NIP)	Suspect Description ("X" APPLICABLE) <u>General:</u> <u>Hair:</u> <u>Eyes:</u> <u>Ethnicity</u> Height: 6'01" <input type="checkbox"/> Bln <input type="checkbox"/> Blk <input checked="" type="checkbox"/> Brn <input type="checkbox"/> Blu <input type="checkbox"/> Brn <input type="checkbox"/> Asian <input type="checkbox"/> Black <input type="checkbox"/> Hispanic Weight: 1800 lbs. <input type="checkbox"/> Gry <input type="checkbox"/> Red <input type="checkbox"/> None <input type="checkbox"/> Grn <input checked="" type="checkbox"/> Hzl <input checked="" type="checkbox"/> White <input type="checkbox"/> Other: _____			
Vehicle Type ("X" APPLICABLE) <input type="checkbox"/> Auto <input type="checkbox"/> Vessel <input checked="" type="checkbox"/> Other	Description (Make, Model, Year, Color) N/A		License Plate Number/VIN N/A	

## Offenses and Charges

<input checked="" type="checkbox"/> F&G <input type="checkbox"/> T-14 <input type="checkbox"/> Other: _____ Section: 5901 Description: "Unlawful to block or impede fish passage"	<input type="checkbox"/> F&G <input type="checkbox"/> T-14 <input type="checkbox"/> Other: _____ Section: _____ Description: _____
<input checked="" type="checkbox"/> F&G <input type="checkbox"/> T-14 <input type="checkbox"/> Other: _____ Section: 1603(d) Description: "Violation of stream alteration agreement"	<input type="checkbox"/> F&G <input type="checkbox"/> T-14 <input type="checkbox"/> Other: _____ Section: _____ Description: _____
<input type="checkbox"/> F&G <input type="checkbox"/> T-14 <input type="checkbox"/> Other: _____ Section: _____ Description: _____	<input type="checkbox"/> F&G <input type="checkbox"/> T-14 <input type="checkbox"/> Other: _____ Section: _____ Description: _____

## Evidence Seized

Evidence Description (Amount, Type, Serial Number, etc.) (Evidence photos taken at scene)	"X" ONE <input type="checkbox"/> Held <input type="checkbox"/> Returned <input type="checkbox"/> Destroyed <input type="checkbox"/> Other	Evidence Photographed? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Evidence Description (Amount, Type, Serial Number, etc.)	"X" ONE <input type="checkbox"/> Held <input type="checkbox"/> Returned <input type="checkbox"/> Destroyed <input type="checkbox"/> Other	Evidence Photographed? <input type="checkbox"/> Yes <input type="checkbox"/> No
Evidence Description (Amount, Type, Serial Number, etc.)	"X" ONE <input type="checkbox"/> Held <input type="checkbox"/> Returned <input type="checkbox"/> Destroyed <input type="checkbox"/> Other	Evidence Photographed? <input type="checkbox"/> Yes <input type="checkbox"/> No

## Case Synopsis

(please see attached copy of probable cause summary)


See WPD 6b For Additional Suspect and Witness Information "X" ONE  Yes  No

Preparer's Name and Badge Number Brian S. Boyd #502	Date 09/29/00	Reviewer's Name <i>[Signature]</i>	Date 9-30-00
--	------------------	---------------------------------------	-----------------

**NARRATIVE/SUPPLEMENTAL**

WPD 8a p.2 (Rev 10-98)

Region# **NCNCR** Page **2 of 2**

DATE OF INCIDENT/OCCURRENCE <b>09/03/00</b>	TIME (2400) <b>1200</b>	CITY/COUNTY/JUDICIAL DISTRICT <b>Stanshaw Creek / Siskiyou County / Happy Camp District</b>	
* APPLICABLE <input type="checkbox"/> Narrative <input type="checkbox"/> Arrest Report <input type="checkbox"/> Supplemental <input checked="" type="checkbox"/> Formal Complaint		TYPE OF REPORT (* APPLICABLE) <input type="checkbox"/> Commercial Fishing <input type="checkbox"/> Hunting <input type="checkbox"/> Inland Pollution <input type="checkbox"/> Incident Report <input type="checkbox"/> Recreational Fishing <input type="checkbox"/> Trapping <input type="checkbox"/> Marine Pollution <input checked="" type="checkbox"/> Other: <b>1603</b>	
Location/Subject/Incident Name <b>Stanshaw Creek / Stream Violation / COLE</b>		Arresting/Case Officer <b>Brian S. Boyd</b>	Citation Number <b>AB019404</b>
<b>1. NARRATIVE:</b>			
<b>2. On the above date and time while in full uniform in a marked vehicle I responded to a citizen</b>			
<b>3. complaint that Stanshaw Creek was blocked to fish passage by an illegal rock diversion dam. I</b>			
<b>4. began my hike from Hwy. 96 and walked upstream on Stanshaw Creek approximately 900 yards</b>			
<b>5. before reaching a rock diversion dam. The dam was located on public land. I found the rock dam</b>			
<b>6. to be approximately three and a half feet tall. The dam diverted nearly all the surface flow down a</b>			
<b>7. long diversion ditch. Due to the dam's construction, no fish could pass upstream. I did find trout</b>			
<b>8. fry below the diversion and in the diversion ditch. The reporting party stated that the diversion was</b>			
<b>9. constructed by COLE. After taking several photos of the site I left to contact COLE.</b>			
<b>10. After several attempts I contacted COLE and met with him at his residence on 09/16/00 to</b>			
<b>11. discuss the diversion dam. COLE stated that he had a legal right to the water. COLE stated that he</b>			
<b>12. had constructed the rock diversion dam. COLE stated that he had a 1603 permit issued by the</b>			
<b>13. Dept. of Fish and Game for the diversion. COLE gave me a brief tour of his property and took me</b>			
<b>14. to the diversion dam. I explained to COLE that I was not interested in any legal battles over who</b>			
<b>15. had the right to the water. I explained to COLE that I was primarily concerned that his diversion</b>			
<b>16. did not allow fish to pass freely. COLE stated that the amount of water need to allow fish passage</b>			
<b>17. would cause him a severe financial burden, as he uses the water to generate power for his property</b>			
<b>18. and business.</b>			
<b>19. Several days later I reviewed COLE's 1603 agreement, see attached, which did not allow for the</b>			
<b>20. blocking or impeding of fish passage. The 1603 agreement stated that it was a violation of the</b>			
<b>21. agreement to block or impede the fish passage. I explained to COLE that a formal complaint</b>			
<b>22. would be filed.</b>			
<b>23.</b>			
<b>24. DISPOSITION:</b>			
<b>25. A formal complaint was filed for blocking or impeding fish passage and for violation of the 1603</b>			
<b>26. agreement.</b>			
<b>27.</b>			
<b>28. EVIDENCE:</b>			
<b>29. -photos of the rock dam and diversion site were taken</b>			
<b>30.</b>			
<b>31.</b>			
Preparer's Name and Badge Number <b>Brian S. Boyd #502</b>		Date <b>10/02/00</b>	Reviewer's Name <i>[Signature]</i> Date <b>10-3-00</b>

**DEPARTMENT OF FISH AND GAME**

601 LOCUST STREET

REDDING, CA 96001

(530) 225-2300

Notification No. 99-0040Date Received January 21, 1999**RECEIPT OF NOTIFICATION**

Mr. Sean Bagheban  
Post Office Box 160621  
Sacramento, California 95816

Dear Mr. Bagheban:

We have received your notification of proposed operations on Stanshaw Creek  
tributary to Klamath River of Siskiyou County in the  
Sect: 33, T13N, R6E

Your proposed operation has been given notification number and assigned to a Department representative who will contact you soon.

Under provisions of the Fish and Game Code, you may not begin work on your proposed project until the Department has conducted an inspection and its recommendations (or, if an agreement cannot be reached, the decision of an arbitration panel) have been incorporated into your project.

The provisions of the Fish and Game Code are intended to protect and conserve California fish and wildlife resources.

We look forward to working with you.

Sincerely,

Donald B. Koch  
Regional Manager

DBK:sg

cc: Lt. Konvalin  
Wdn. Presley  
NCRWQCB

000639

The department has 30 days from date of receipt of a completed application in which to make its recommendations. This time period does not begin until the department receives the appropriate fee (see attached fee schedule).

T.H.P. No. \_\_\_\_\_

Notification No. 99-0040

Received 1/21/99

WR-9

STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
DEPARTMENT OF FISH AND GAME

CL# 1334  
S/32

NOTIFICATION OF REMOVAL OF MATERIALS AND/OR ALTERATION  
OF LAKE, RIVER, OR STREAMBED BOTTOM, OR MARGIN

A. APPLICANT Pursuant to Sections 1601-1607 of the California Fish and Game Code

Douglas T. Cole of 92520 HWY 96, Somes Bar,

Name of Applicant

Mailing Address

Representing Marble Mountain Ranch CA. 95568

Name and address of Individual, Agency, Company, etc. owning property or doing work.

Hereby notify the California Department of Fish and Game of operations to be carried out by or for me

from N/A to N/A on or affecting

Starting Date

Ending Date

Stanshaw Creek of Siskiyou County, tributary to Klamath River

Name of Stream, River, or Lake

Major Water Body

Located SW 1/4 of NE 1/4

Distance and Direction to Landmarks

Section 33 Township 13N Range 6E

USGS Map Humboldt Co. Assessor's Parcel No. N/A

Property owners name and address (if different from applicant) Same as above

Same as above is responsible for operations at the site.

Name of Person to Be Contacted at Site During Operations

He/she can be reached at same address (530) 469-3437

Mailing Address

Telephone

B. Description of operation 1. The nature of said operations will be as follows:

Check all squares which apply.

- Soil, sand, gravel, and/or boulder removal or displacement
- Water diversion or impoundment
- Mining—other than aggregate removal
- Road or bridge construction
- Levee or channel construction
- Timber harvesting or any related activity required for harvesting timber
- Temporary, recreational or irrigation dam
- Fill or spoil in bed, bank, or channel
- Other—Describe below

2. Type of material removed, displaced or added  Soil  Sand  Gravel  Boulders  
Volume app. 5,000 cu-yd.

3. Equipment to be used in the described site bulldozers

4. Use of water (i.e., domestic, irrigation, gravel, washing, etc.) domestic, irrigation quantity Res. Val ~ 3.3 ac-ft when full

5. Describe type and density of vegetation to be affected, and estimate area involved.  
None

6. What actions are proposed to protect fish and wildlife resources and/or mitigate for project impacts?  
Necessary action mutually agreed to.

7a. Does project have a local or state lead agency or require other permits?  Yes  No

7b. If 7a answer is yes, please attach or identify any available environmental document.

7c. For state-designated wild and scenic rivers, a determination of the project's consistency with the California Wild and Scenic Rivers Act must be made by the Secretary for Resources. Until the Secretary determines the project is consistent with the Act, the Department cannot issue a valid agreement. A tentative agreement will be issued, conditioned upon a finding of consistency by the Resources Secretary.

7d. THIS AGREEMENT IS NOT INTENDED AS AN APPROVAL OF A PROJECT OR OF SPECIFIC PROJECT FEATURES BY THE DEPARTMENT OF FISH AND GAME. INDEPENDENT REVIEW AND RECOMMENDATIONS WILL BE PROVIDED BY THE DEPARTMENT AS APPROPRIATE ON THOSE PROJECTS WHERE LOCAL, STATE, OR FEDERAL PERMITS OR OTHER ENVIRONMENTAL REPORTS ARE REQUIRED.

8. Briefly describe proposed construction methods. Attach diagram or sketch of the location of your operation to clearly indicate the stream or other water and access and distance from named public road. Indicate locked gates with an "X". Show existing features with a solid line (————) and proposed features with a broken line (-----). Show compass direction. Attach larger scale map if necessary.  
Please see attached.

Sean Bagheban (916) 612-3539  
Signature of Applicant  
Agent for Douglas T. Cole  
000640 Date 07 03/99

Note: Authority cited: Section 1607, Fish and Game Code  
Reference: Section 1607, Fish and Game Code.

We cannot process your application until the appropriate fee has been received. When submitting your notification, complete the following information and make your check or money order payable to the "Department of Fish and Game". PLEASE DO NOT SUBMIT CASH. Under provisions of the Fish and Game Code, work cannot begin until agreement is reached.

Notifier's Name: Douglas T. Cole Sean Bagheban  
(Please Print) (Signature)  
for Douglas T. Cole

Address: 92520 Hwy 96 1/12/99  
Somes Bar, CA 95568 (Date)

Name of Stream: Stanshaw Creek

Total Cost of Project: 0 MAIL TO:

Fee Submitted: \$ 132.00 Department of Fish and Game  
601 Locust Street  
Redding, California 96001

Please send all correspondence to:  
Sean Bagheban  
P.O. Box 160621  
Sacramento, CA 95816  
(916) 612-3539

MINIMUM FILING FEE: \$100.00  
 FILE ORIGINAL & ONE COPY  
 TYPE OR PRINT IN BLACK INK  
 (For explanation of entries required, see  
 booklet "How to File an Application to  
 Appropriate Water in California")

STATE OF CALIFORNIA  
 State Water Resources Control Board  
 DIVISION OF WATER RIGHTS  
 901 P Street, Sacramento  
 P. O. Box 2000, Sacramento, CA 95812-2000

APPLICATION TO APPROPRIATE WATER BY PERMIT  
 (Check one box only) OR  
 REGISTRATION OF SMALL DOMESTIC USE APPROPRIATION\*

(If this form is used to register a small domestic use appropriation, the terms "application" and "applicant" herein, and in related forms, shall mean "registration" and "registrant".)

Application No. \_\_\_\_\_  
 (Leave blank)

1. APPLICANT

Douglas T. Cole (Name of applicant) (530) 469-3437  
 (Telephone number where you may be reached between 8 a. m. and 5 p. m. - include area code)  
92520 Highway 96  
Somes Bar CA 95568  
 (Mailing address) (City or town) (State) (Zip code)

2. SOURCE

a. The name of the source at the point of diversion is Stanshaw Creek  
 (If unnamed, state that it is an unnamed stream, spring, etc.)  
 tributary to Klamath River thence Pacific Ocean  
 b. In a normal year does the stream dry up at any point downstream from your project? YES  NO  If yes, during what months is it usually dry? From \_\_\_\_\_ to \_\_\_\_\_  
 What alternate sources are available to your project should a portion of your requested direct diversion season be excluded because of a dry stream or nonavailability of water? None

3. POINTS of DIVERSION and REDIVERSION

a. The point(s) of diversion will be in the County of Siskiyou

b. List all points giving coordinate distances from section corner or other tie as allowed by Board regulations i. e. California Coordinate System

Point is within (40-acre subdivision)	Section	Township	Range	Base and Meridian
785,300' N, 1,589,300' E SW 1/4 of NE 1/4	33	13N	6E	H
CA. COORD. ZONE 1	1/4 of 1/4			
	1/4 of 1/4			

c. Does applicant own the land at the point of diversion? YES  NO   
 d. If applicant does not own the land at point of diversion, state name and address of owner and what steps have been taken to obtain right of access: Applicant has a recorded easement,

U.S. Forest Service  
Somes Bar, California

- f. **HEAT CONTROL:** The total area to be heat protected is \_\_\_\_\_ net acres.  
 Type of crop protected is \_\_\_\_\_  
 Rate at which water is applied to use is \_\_\_\_\_ gpm per acre.  
 The heat protection season will begin about \_\_\_\_\_ and end about \_\_\_\_\_  
 (Date) (Date)
- g. **FROST PROTECTION:** The total area to be frost protected is \_\_\_\_\_ net acres.  
 Type of crop protected is \_\_\_\_\_  
 Rate at which water is applied to use is \_\_\_\_\_ gpm per acre.  
 The frost protection season will begin about \_\_\_\_\_ and end about \_\_\_\_\_  
 (Date) (Date)
- h. **INDUSTRIAL:** Type of industry is \_\_\_\_\_  
 Basis for determination of amount of water needed is \_\_\_\_\_
- i. **MINING:** The name of the claim is \_\_\_\_\_ Patented  Unpatented   
 The nature of the mine is \_\_\_\_\_ Mineral to be mined is \_\_\_\_\_  
 Type of milling or processing is \_\_\_\_\_  
 After use, the water will be discharged into \_\_\_\_\_  
 (Name of stream)  
 in \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of Section \_\_\_\_\_, T \_\_\_\_\_, R \_\_\_\_\_, \_\_\_\_\_ B. & M.  
 (40-acre subdivision)
- j. **POWER:** The total fall to be utilized is \_\_\_\_\_ feet. The maximum amount of water to be used through the penstock  
 is \_\_\_\_\_ cubic feet per second. The maximum theoretical horsepower capable of being generated by the  
 works is \_\_\_\_\_. Electrical capacity is \_\_\_\_\_ kilowatts at \_\_\_\_\_ % efficiency.  
 (Cubic feet per second x fall ÷ 8.8) (Hp x 0.746 x efficiency)  
 After use, the water will be discharged into \_\_\_\_\_  
 (Name of stream)  
 in \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of Section \_\_\_\_\_, T \_\_\_\_\_, R \_\_\_\_\_, \_\_\_\_\_ B. & M. FERC No. \_\_\_\_\_  
 (40-acre subdivision)
- k. **FISH AND WILDLIFE PRESERVATION AND/OR ENHANCEMENT:** YES  NO  If yes, list specific species  
 and habitat type that will be preserved or enhanced in item 17 of Environmental Information form WR 1-2.
- l. **OTHER:** Describe use: \_\_\_\_\_ Basis for determination of amount of water needed is \_\_\_\_\_

**6. PLACE OF USE**

- a. Does applicant own the land where the water will be used? YES  NO  Is land in joint ownership? YES  NO   
 (All joint owners should include their names as applicants and sign the application.)  
 If applicant does not own land where the water will be used, give name and address of owner and state what arrangements  
 have been made with the owner. \_\_\_\_\_

b.

USE IS WITHIN (40-acre subdivision)	SECTION	TOWNSHIP	RANGE	BASE & MERIDIAN	IF IRRIGATED	
					Number of acres	Presently cultivated (Y/N)
SW 1/4 of NE 1/4	33	13N	6E	H		
1/4 of 1/4						
1/4 of 1/4						
1/4 of 1/4						
1/4 of 1/4						
1/4 of 1/4						

(If area is unsurveyed, state the location as if lines of the public land survey were projected, or contact the Division of Water Rights. If space does not permit listing all 40-acre tracts, include on another sheet or state sections, townships and ranges, and show detail on map.)

**7. DIVERSION WORKS**

- a. Diversion will be by gravity by means of natural rock dam  
(Dam, pipe in unobstructed channel, pipe through dam, siphon, weir, gate, etc.)
- b. Diversion will be by pumping from N/A Pump discharge rate \_\_\_\_\_ Horsepower \_\_\_\_\_  
(Sump, offset well, channel, reservoir, etc.) (cfs or gpd)
- c. Conduit from diversion point to first lateral or to offstream storage reservoir:

CONDUIT (Pipe or channel)	MATERIAL (Type of pipe or channel lining) (Indicate if pipe is buried or not)	CROSS SECTIONAL DIMENSION (Pipe diameter or ditch depth and top and bottom width)	LENGTH (Feet)	TOTAL LIFT OR FALL		CAPACITY (Estimate)
				Feet	+ or -	
	<u>Hand-dug canal</u>	<u>apx = 1 1/2 ft deep x 8 ft wide</u>	<u>approx. 4,000 ft.</u>	<u>approx. 5</u>	<u>7</u>	<u>8,000 cu. ft.</u>

- d. Storage reservoirs: (For underground storage, complete Supplement 1 to WR1, available upon request.)

Name or number of reservoir, if any	DAM			RESERVOIR			
	Vertical height from downstream toe of slope to spillway level (ft.)	Construction material	Dam length (ft.)	Freeboard Dam height above spillway crest (ft.)	Approximate surface area when full (acres)	Approximate capacity (acre-feet)	Maximum water depth (ft.)
<u>NO NAME</u>	<u>1 ft.</u>	<u>earth</u>	<u>200 ft.</u>	<u>2 ft.</u>	<u>0.41</u>	<u>3.3</u>	<u>10</u>

- e. Outlet pipe: (For storage reservoirs having a capacity of 10 acre-feet or more.)

Diameter of outlet pipe (inches)	Length of outlet pipe (feet)	FALL		Estimated storage below outlet pipe entrance (dead storage)
		(Vertical distance between entrance and exit of outlet pipe in feet)	HEAD (Vertical distance from spillway to outlet pipe in reservoir in feet)	

- f. If water will be stored and the reservoir is not at the point of diversion, the maximum rate of diversion to offstream storage will be \_\_\_\_\_ cfs. Diversion to offstream storage will be made by:  Pumping  Gravity

**8. COMPLETION SCHEDULE**

- a. Year work will start \_\_\_\_\_ b. Year work will be completed \_\_\_\_\_  
 c. Year water will be used to the full extent intended \_\_\_\_\_ d. If completed, year of first use \_\_\_\_\_

**9. GENERAL**

- a. Name of the post office most used by those living near the proposed point of diversion is Happy Camp
- b. Does any part of the place of use comprise a subdivision on file with the State Department of Real Estate? YES  NO   
 If yes, state name of the subdivision \_\_\_\_\_  
 If no, is subdivision of these lands contemplated? YES  NO   
 Is it planned to individually meter each service connection? YES  NO  If yes, When? \_\_\_\_\_
- c. List the names and addresses of diverters of water from the source of supply downstream from the proposed point of diversion: Mr. Fellows (caretaker), 92113 Hwy. 96, Samee Bar, Ca, 95568
- d. Is the source used for navigation, including use by pleasure boats, for a significant part of each year at the point of diversion, or does the source substantially contribute to a waterway which is used for navigation, including use by pleasure boats? YES  NO  If yes, explain: \_\_\_\_\_



**10. EXISTING WATER RIGHT**

Do you claim an existing right for the use of all or part of the water sought by this application? YES  NO

If yes, complete table below:

Nature of Right (riparian, appropriative, groundwater.)	Year of First Use	Purpose of use made in recent years including amount, if known	Season of Use	Source	Location of Point of Diversion

**11. AUTHORIZED AGENT (Optional)**

With respect to  all matters concerning this water right application  those matters designated as follows:

Sean Bagheban (Name of agent) (916) 612-3539 (Telephone number of agent between 8 a. m. and 5 p. m.)  
P.O. Box 160621 (Mailing address) Sacramento CA 95816 (City or town) (State) (Zip code)

is authorized to act on my behalf as my agent.

**12. SIGNATURE OF APPLICANT AUTHORIZED AGENT**

I (we) declare under penalty of perjury that the above is true and correct to the best of my (our) knowledge and belief.

Dated Nov. 27 19 98, at Sacramento, California

(If there is more than one owner of the project, please indicate their relationship.)

Ms. Mr. Sean Bagheban  
 Miss. Mrs. \_\_\_\_\_  
 \_\_\_\_\_ (Signature of applicant)  
 Ms. Mr. \_\_\_\_\_  
 Miss. Mrs. \_\_\_\_\_  
 \_\_\_\_\_ (Signature of applicant)

Additional information needed for preparation of this application may be found in the instruction Booklet entitled "HOW TO FILE AN APPLICATION TO APPROPRIATE WATER IN CALIFORNIA". If there is insufficient space for answers in this form, attach extra sheets. Please cross-reference all remarks to the numbered item of the application to which they may refer. Send original application and one copy to the STATE WATER RESOURCES CONTROL BOARD, DIVISION OF WATER RIGHTS, P. O. Box 2000, Sacramento, CA 95812-2000, with \$100 minimum filing fee.

**NOTE:**

If this application is approved for a permit, a minimum permit fee of \$100 will be required before the permit is issued. There is no additional fee for registration of small domestic.

STATE OF CALIFORNIA  
 STATE WATER RESOURCES CONTROL BOARD  
 DIVISION OF WATER RIGHTS  
 901 P STREET, SACRAMENTO, CA 95814  
 MAILING ADDRESS  
 P.O. BOX 2000, SACRAMENTO, CA 95812-2000

REGISTRATION OF SMALL DOMESTIC USE APPROPRIATION  
 FISH AND GAME INFORMATION

APPLICATION NO. \_\_\_\_\_  
 (leave blank)

IN ORDER FOR YOUR REGISTRATION OF SMALL DOMESTIC USE TO BE ACCEPTED AS COMPLETE, YOU SHOULD DO THE FOLLOWING:

- A) Complete Application/Registration for WR 1 to the best of your ability.
- B) Contact the Environmental Services Supervisor for the California Department of Fish and Game region in which your diversion will be located (see last page of this form) to discuss your project and the information to be included in this form.
- C) Complete, sign, and date this form. (Note certification above your signature).
- D) Send a copy of this form and a copy of form WR 1 to the Environmental Services Supervisor of the regional office of the California Department of Fish and Game (see last page of this form for address).
- E) Send the original of this form and form WR 1 to the Division of Water Rights at the mailing address given at the top of this page.

IF YOUR COMPLETED FORMS MEET THE REQUIREMENTS OF THE WATER CODE, IF YOU HAVE PAID THE \$100.00 FILING FEE, AND IF YOUR DIVERSION WILL NOT BE FROM A STREAM DECLARED BY THE STATE WATER RESOURCES CONTROL BOARD TO BE FULLY APPROPRIATED OR FROM A STREAM SEGMENT FOR WHICH THE DEPARTMENT OF FISH AND GAME HAS ESTABLISHED STREAMFLOW REQUIREMENTS (THE DIVISION OF WATER RIGHTS MAINTAINS CURRENT LISTS FOR THESE), YOUR REGISTRATION WILL BE ACCEPTED AND EVIDENCED BY A CERTIFICATE OF REGISTRATION, A COPY OF WHICH WILL BE MAILED TO YOU.

PROJECT DESCRIPTION

1. Provide a brief description of your project including, but not limited to, the type of diversion structure and conveyance facilities, any existing facilities, and how the project will operate.

Water is diverted from Stanshaw Creek and conveyed through a flume to the property. Water is stored in an oval-shaped pond and used for domestic purposes.

Owner is Douglas T. Cole

Marble Mountain Ranch

92520 Highway 96

Somes Bar, CA 95568

Tel: (530) 469-3437

## AGREEMENT

### REGARDING PROPOSED ACTIVITIES SUBJECT TO CALIFORNIA FISH AND GAME CODE SECTIONS 1600/1606

1     **WHEREAS:**

2     1. Mr. Douglas T. Cole, of Somes Bar, California, representing the  
3     property owner, Marble Mountain Ranch, of Somes Bar (jointly referred to  
4     as "OPERATOR"), on January 21, 1999 notified (99-0040) the DEPARTMENT of  
5     Fish and Game (the DEPARTMENT) of the intent to divert or obstruct the  
6     natural flow of, or change the bed or banks of, or use materials from  
7     Stanshaw Creek, Siskiyou County, a water over which the DEPARTMENT  
8     asserts jurisdiction pursuant to Division 2, Chapter 6 of the California  
9     Fish and Game Code.

10    2. Fish and Game Code Sections 1600 et seq. make provisions for the  
11    negotiation of agreements regarding the delineation and definition of  
12    appropriate activities, project modifications and/or specific measures  
13    necessary to protect fish and wildlife resources.

14    3. The DEPARTMENT has determined that without the mitigative features  
15    identified in this agreement, the activities proposed in the OPERATOR's  
16    notification could substantially adversely affect fish and wildlife. The  
17    DEPARTMENT's representative, Ron Presley, inspected the site on February  
18    16, 1999 and has determined that resident trout and aquatic  
19    invertebrates would be the wildlife potentially affected by this project  
20    due to loss of stream habitat due to lower flows.

21    **NOW THEREFORE, IT IS AGREED THAT:**

22    1. If this agreement is found to be in conflict with any other provision  
23    of law or general conditions of public safety, it is void.

24    2. This agreement does not constitute or imply the approval or  
25    endorsement of a project, or of specific project features, by the  
26    DEPARTMENT of Fish and Game, beyond the DEPARTMENT's limited scope of  
27    responsibility, established by Code Sections 1600 et seq. This  
28    agreement does not therefore assure concurrence by the DEPARTMENT with  
29    the issuance of permits from this or any other agency. Independent  
30    review and recommendations will be provided by the DEPARTMENT as  
31    appropriate on those projects where local, state, or federal permits or  
32    environmental reports are required. This includes but is not limited to  
33    CEQA and NEPA project review. Any fish and wildlife protective or  
34    mitigative features that are adopted by a CEQA or NEPA lead agency or  
35    made the conditions for the issuance of a permit, for this project,  
36    become part of the project description for which this agreement is  
37    written.

3. If the project could result in the "take" of a state listed rare, threatened or endangered species, OPERATOR has the responsibility to obtain from the DEPARTMENT, a California Endangered Species Act Permit (CESA 2081 Permit). The DEPARTMENT may formulate a management plan that will avoid or mitigate take. Pursuant to Fish and Game Code Section 2090, a State lead agency shall consult with the DEPARTMENT to ensure that projects will not jeopardize the continued existence of any listed species. If appropriate, contact the DEPARTMENT CESA coordinator at (530) 225-2300.

4. To the extent that the provisions of this agreement provide for activities that require OPERATOR to trespass on another owner's property, they are agreed to with the understanding that OPERATOR possesses the legal right to so trespass. In the absence of such right, the agreement is void.

5. To the extent that the provisions of this agreement provide for activities that are subject to the authority of other public agencies, such as county use permits, said activities are agreed to with the understanding that all appropriate permits and authorizations will be obtained prior to commencing agreed activities.

6. All provisions of this agreement remain in force throughout the term of the agreement. Any provision of the agreement may be amended at any time provided such amendment is agreed to in writing by both parties. Mutually approved amendments become part of the original agreement and are subject to all previously negotiated provisions. Title 14, California Code of Regulations, Section 699.5(g) requires the OPERATOR to submit the sum equal to 50% of the fee of the existing agreement to amend an existing agreement.

7. The OPERATOR shall provide a copy of this agreement to all project contractors, subcontractors, agents, employees, and project supervisors. Copies of the agreement must be available at work sites during all periods of active work and must be presented to DEPARTMENT personnel upon demand until the project and/or monitoring period(s) are completed.

8. OPERATOR, contractor, or subcontractor are jointly and severally liable for compliance with the provisions of this agreement. Upon the DEPARTMENT'S determination of a violation of the terms of this Agreement, this Agreement shall be suspended or canceled, at the discretion of the DEPARTMENT and all activity must immediately stop until another agreement is made. Failure to comply with the provisions and requirements of this agreement and with other pertinent Code Sections including but not limited to Fish and Game Code Sections 5650, 5652, 5937, and 5948, may result in prosecution.

9. OPERATOR agrees to provide the DEPARTMENT access to the project site at any time, to ensure compliance with the terms, conditions, and provisions of this agreement.

10. It is understood that the DEPARTMENT enters into this agreement for purposes of establishing protective features for fish and wildlife, in the event that a project is implemented. The decision to proceed with

the project is the sole responsibility of OPERATOR, and is not required by this agreement. It is agreed that all liability and/or incurred costs related to or arising out of OPERATOR's project and the fish and wildlife protective conditions of this agreement, remain the sole responsibility of OPERATOR. OPERATOR agrees to hold harmless and defend the State of California and the DEPARTMENT of Fish and Game against any related claim made by any party or parties for personal injury or other damage.

11. OPERATOR assumes responsibility for the restoration of any fish and wildlife habitat which may be impaired or damaged either directly or, incidental to the project, as a result of failure to properly implement or complete the mitigative features of this agreement, or from activities which were not included in OPERATOR's notification.

12. The DEPARTMENT shall have continuing jurisdiction over the project site until all restoration of the site is complete.

13. The notification, project descriptions, all photos, and drawings submitted with the notification shall become part of this agreement, to define the scope of the proposed project. All work shall be done according to plans submitted to and approved by the DEPARTMENT. The OPERATOR shall notify the DEPARTMENT in writing of any modifications made to the project plans submitted to the DEPARTMENT. Any modification to the plans requires an amendment to this agreement. Changes to the original plans done voluntarily may result in the DEPARTMENT suspending or canceling this agreement. The OPERATOR must then submit a new notification.

14. The following provisions including any additional project features resulting from the above, constitute the limit of activities agreed to and resolved by this agreement. The signing of this agreement does not imply that OPERATOR is precluded from doing other activities, at the site. However, activities not specifically agreed to and resolved by this agreement are subject to separate notification pursuant to Section 1601/03.

15. The OPERATOR shall notify the DEPARTMENT of the dates of commencement and completion of operations, three days prior to such commencement or completion, by telephone message to (530) 841-2557.

16. To the extent that the provisions of this agreement provide for the diversion of water, they are agreed to with the understanding that OPERATOR possesses the legal right to so divert such water. In the absence of such right, the agreement is void.

#### FEDERAL JURISDICTION

The US Army Corps of Engineers (Corps) has permitting requirements for certain instream projects under Section 404 of the Federal Clean Water Act. If this project exceeds one acre of disturbance within the ordinary high-water mark of the stream and/or the stream's average

annual flow exceeds five cubic feet per second, a permit may be required by the Corps. A Corps permit may also be required for the installation of rip rap that exceeds 500 linear feet at or over one cubic yard of material per linear foot. If there is any question regarding the possibility of your project meeting the above limitations, you should contact the Corps prior to beginning work. This Agreement in no way represents permitting requirements by the Corps. It is OPERATOR'S responsibility to contact the U.S. Army Corps of Engineers, and to comply with the provisions any 404 Permit issued, if required by the Corps.

For information, contact the US Army Corps of Engineers office in your area: San Francisco District, Eureka Office (707)443-0855.

OPERATOR may have certain other responsibilities pursuant to the Federal Endangered Species Act resulting in mitigative project features required by the U.S. Fish and Wildlife Service or National Marine Fisheries Service.

#### PROVISIONS

Agreed work includes activities associated with the diversion of flows from Stanshaw Creek for irrigation, recreation, domestic, and small hydro-electric use. Construction includes the annual construction of a rock diversion dam (by hand) to entrain flows into the diversion ditch, and maintenance of a culvert/flume crossing on an unnamed ephemeral tributary to Stanshaw Creek. The project area is located in Siskiyou County (SW 1/4 of NE 1/4 of S 33, T 13 N, R 6 E) on property administered by the U.S. Forest Service. The diversion structure existed prior to this agreement.

#### EQUIPMENT AND ACCESS

Vehicles shall not be driven or equipment operated in water covered portions of a stream, or where wetland vegetation, riparian vegetation, or aquatic organisms may be destroyed. Except as otherwise provided for in the Agreement, all work shall be performed by hand/hand tools.

Access to the work site shall be via existing trails.

#### WATER DIVERSION/STRUCTURES

This Agreement does not authorize the construction of any temporary or permanent dam, structure, flow restriction or fill except as described in OPERATOR'S notification.

An adequate fish passage facility shall be incorporated into any barrier that obstructs fish passage.

3 Except as otherwise specified in this Agreement, fill material for  
4 the annual diversion dam shall consist of only native, clean rock which  
5 will cause little or no siltation. If tarps, sand bags, or plastic  
6 sheeting are used to seal the diversion structure, the tarps, bags,  
7 and/or sheeting shall be removed before high seasonal flows return to  
8 prevent littering of the stream.

9 When any dam or artificial obstruction is being constructed,  
10 maintained, or placed in operation in the stream bed, flows to  
11 downstream reaches shall be allowed to pass downstream to maintain  
12 wildlife, plant life, and aquatic life below the dam in a healthy  
13 condition, and to allow fish migration, during all times that the  
14 natural stream flow would have supported aquatic life, pursuant to Fish  
15 and Game Code section 5937 and 5901.

16 Structures and associated materials not designed to withstand high  
17 seasonal flows shall be removed to areas above the normal high-water  
18 mark before the return of such seasonal flows.

19 No excavation in the live stream is allowed. "Live stream" shall  
20 be defined as that portion of the stream bed where flowing water is  
21 present or anticipated during the term of this agreement.

22 In ephemeral streams, all construction will be done while the work  
23 site is dry. Excavated material shall be placed outside the stream's  
24 normal high-water mark.

25 A culvert exists in the intersection of the diversion flume/ditch  
26 and an ephemeral stream. The culvert shall be maintained so as to resist  
27 washout. The up stream and down stream fill slopes shall feature rock  
28 slope protection (RSP) from the toe to the top of the fill. A fail soft  
29 dip shall be maintained where the fill meets original ground to allow  
30 topping flows to remain within the ephemeral stream channel. Rock  
31 dissipators shall be placed at the culvert outlet to prevent channel  
32 bed/bank scour. Upon the next occasion when the culvert washes out, the  
33 pipe alignment shall be corrected to remove the skew (It should be  
34 straight within the channel rather than pointing at the bank.).

## 35 WATER QUALITY

### 36 EROSION, TURBIDITY, AND SILTATION

37 Mud, silt, or other pollutants from diversion maintenance or other  
38 project-related activities shall not be discharged into the flowing  
39 stream or be placed in locations where it may be washed into the stream  
40 by high flows or precipitation.

41 Silty/turbid water shall not be discharged into the stream. Such  
42 water shall be settled, filtered, or otherwise treated prior to  
43 discharge back into the stream channel.

99-0040

Page 6 of 7

The OPERATOR shall install adequate control devices to ensure that turbidity or siltation resulting from the project related activities does not constitute a threat to aquatic life.

Erosion control measures shall be utilized throughout all phases of operation where sediment runoff from exposed slopes threatens to enter waters of the State. At no time shall silt laden runoff be allowed to enter the stream or directed to where it may enter the stream.

Upon DEPARTMENT determination that turbidity/siltation levels resulting from project related activities constitute a threat to aquatic life, activities associated with the turbidity/siltation shall be halted until effective DEPARTMENT approved control devices are installed, or abatement procedures are initiated.

#### CHANNEL RESTORATION

##### FILL AND SPOIL

Rock, gravel, and/or other materials shall not be imported to, taken from or moved within the bed or banks of the stream except as otherwise addressed in this Agreement.

Fill length, width, and height dimensions shall not exceed those of the original diversion dam installation.

Fill shall be limited to the minimal amount necessary to accomplish the agreed activities. Except as otherwise specified in this Agreement, fill construction materials shall consist of native, clean, silt-free gravel or river rock.

No fill material, other than clean river rock/gravel, shall be allowed to enter the live stream.

No castings or spoil from the trenching or ditch cleaning operations shall be placed on the stream side of the ditch where it may be washed by rainfall into the stream.

The OPERATOR shall have readily available plastic sheeting or visquine and will cover exposed spoil piles and exposed areas to prevent these areas from losing loose soil into the stream. These covering materials shall be applied when it is evident rainy conditions threaten to erode loose soils into the stream.

##### CHANNEL BED STABILIZATION

If a stream channel has been altered during the operations, its low flow channel shall be returned as nearly as possible to pre-project conditions without creating a possible future bank erosion problem or a flat wide channel or sluice-like area. The gradient of the stream bed shall be returned to pre-project grade.



3 BANK STABILIZATION

4 Areas of disturbed soils which slope toward a stream, shall be  
5 stabilized to reduce erosion potential. The OPERATOR shall plant;  
6 seed, and heavily mulch all soils disturbed by the project prior to the  
7 return of seasonal rains. The OPERATOR shall consult with the U.S.  
8 Forest Service and use the U.S. Forest Service recommended plants,  
9 seeds, and mulch.

10 Where suitable vegetation cannot reasonably be expected to become  
11 established, rock slope protection (RSP) materials that will resist  
12 wash out shall be used for such stabilization. The bank stabilization  
13 material shall extend above the normal high-water mark. Any  
14 installation of RSP materials not described in the original project  
15 description shall be coordinated with the DEPARTMENT. Coordination may  
16 include the negotiation of additional Agreement provisions for this  
17 activity.

18  
19 VEGETATION

20 Disturbance or removal of vegetation shall not exceed the minimum  
21 necessary to complete the authorized operations. The disturbed  
22 portions of any stream channel within the high water mark of the stream  
23 shall be restored to their original condition under the direction of  
24 the DEPARTMENT.

25 CLEAN-UP

26 Structures and associated materials not designed to withstand high  
27 water flows shall be moved to areas above high water before such flows  
28 occur.

29 Any materials placed in seasonally dry portions of a stream that  
30 could be washed downstream or could be deleterious to aquatic life,  
31 wildlife, or riparian habitat shall be removed from the project site  
32 prior to inundation by high flows.

33 CONCURRENCE

34 Douglas T. Cole 4/28/97  
35 (signature) (date)

36 Douglas T. Cole  
37 Marble Mountain Ranch  
38 OPERATOR

39 Charles Konval Ron R. Presley  
40 (signature) (date)  
41 California DEPARTMENT of Fish and Game  
4/30/97

















Oct 06 00 10:47a

Konrad Fisher

357099

WR-5 p.1

Mr. Allen,

Thanks again for all you have done on behalf of the fish.

I thought this letter would give you a better idea of how much water, if any, the Game Warden should leave in the Coles diversion.

As I understand it, their only basis for claiming a pre-1914 water right is an old letter from Sam Stanshaw, the man whose mining claim comprised both the Coles' and our property. According to the water board, this letter could warrant a right of between .11 to .5 cfs. However, this is based on the assumption that Stanshaw's mining operation took place on what is now the Coles property. All physical evidence suggests the mining actually took place on what is now our property.

According to Yoko Mooring of the Water Board, this letter does not constitute a pre-1914 water right and they have not yet been given any right.

Should I ask the Game Warden, Brian Boyd to warn the Coles before he puts water back into the creek and suggest that they install a pipe so they will at least have water for domestic use? Is there anything I should do to get as much water as possible back in the creek while the board decides if they have a right?

I can be reached at 530.335.7099 if you have any questions or advice.

Best Wishes,  
Konrad Fisher

Enclosed faxed copies  
of the Division's 9-15-1998  
complaint investigation  
letter and copy of  
DFG Misdemeanor  
citation which is in  
the file under cover of  
11-9-2000 letter from  
District attorney. kdm

✓ E. Sturtevant Water Notice.

Notice: I hereby give notice that I have taken up and hold for mining <sup>and prospecting</sup> purposes, six hundred inches of the water running in Sturtevant Creek, so called, the water so taken being carried first by ditch <sup>to my paper field</sup> and <sup>then</sup> <sup>by</sup> <sup>ditch</sup> <sup>and</sup> <sup>flume</sup> <sup>to</sup> <sup>my</sup> <sup>paper</sup> <sup>field</sup>, said creek being in Dillan's Township, State of California, County of Kern.

March 25<sup>th</sup> A.D. 1867 E. Sturtevant

Filed and Recorded March 25<sup>th</sup> A.D. 1867.  
 in Book of Mining Claims folio 232.  
 B. W. Jenkins, Recorder.

Filed for Record at request of E. D. Hill June 1st 1880 at 15 min past 8 o'clock A.M.  
 Joseph Rice, Recorder

Recorded June 19<sup>th</sup> 1880 at 50 min past 8 o'clock A.M.  
 Joseph Rice, Recorder

SISKIYOU COUNTY DISTRICT ATTORNEY  
COMPLAINT REQUEST SUMMARY

Date: 09/29/00

Agency: Fish and Game      SUSPECT  
1) Douglas Taylor COLE

REQUESTED CHARGES  
F&G CODE SEC. 5901  
F&G CODE SEC. 1603(d)

Case Number: AB019404  
Felony ( ) Misdemeanor (X)  
Date of offense: 09/03/00  
Primary Victim: People of California  
Investigating Officer: Brian S. Boyd  
Reviewed By: \_\_\_\_\_

Arrested: No  
Arrest Warrant\*: No  
Appearance Letter\*: Yes  
Rap Sheet Enclosed: No  
Criminal Record: Unk.

PROBABLE CAUSE SUMMARY:

On 09/03/00 I responded to a report from a private property owner that Stanshaw Creek, located in Southwest Siskiyou County, was blocked to fish passage. The reporting party stated that there was not enough water coming down the creek to support the fish below. I met with the reporting party and hiked up to a rock dam diversion created by COLE. The rock diversion was approximately three and a half feet tall leaving no possibility of any fish to jump or go around the dam. I found small trout fry below the dam and in the diverted channel. I photographed the site. I later contacted COLE who stated that he had legal right to the water. COLE stated that he had created the rock diversion to divert water to his property for various uses. I later checked COLE's valid 1603 permit. The permit did not allow for the creation of a rock dam that prevented or impeded fish passage in the stream.

Officer's Signature      Date  
*Brian S. Boyd*      09/29/00

Badge #  
502

Reviewing Officer's Signature      Date

*502 8146*

1 PETER F. KNOLL  
District Attorney  
2 Lawrence R. Allen (State Bar #94773)  
Deputy District Attorney  
3 County of Siskiyou  
P.O. Box 986  
4 Yreka, California 96097  
(530) 226-0572  
5 Attorneys for Plaintiff

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SISKIYOU

OCT - 6 2000

BY Endorsed - T. Blackwell  
DEPUTY CLERK

7 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **IN AND FOR THE COUNTY OF SISKIYOU**

9  
10 **THE PEOPLE OF THE STATE** )  
**OF CALIFORNIA,** )  
11 **Plaintiff,** )  
12 **vs.** )  
13 **DOUGLAS TAYLOR COLE, MARBLE** )  
**MOUNTAIN RANCH,** )  
14 **and Does 1 - 50,** )  
15 **Defendants.** )

Case Number: **SC CV CV '00 - 1700**

**COMPLAINT FOR INJUNCTION,  
COMPLIANCE ORDER, CIVIL  
PENALTIES, AND OTHER RELIEF.**

16  
17  
18 Plaintiff, the People of the State of California, by and through Peter F. Knoll, District  
19 Attorney of the County of Siskiyou, State of California, is informed and thereon alleges:

20  
21 **VENUE AND JURISDICTION**

22 1. PETER F. KNOLL, District Attorney of the County of Siskiyou, acting to protect the  
23 public resources, brings this action in the public interest in the name of THE PEOPLE OF THE  
24 STATE OF CALIFORNIA, at the request of the California Department of Fish and Game,  
25 pursuant to Fish and Game Code Sections 5650.1 and 1603 and Business and Professions Code  
26 Section 17200.



1 defendants by such fictitious names. Plaintiff will amend this Complaint to show their true  
2 names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges  
3 that each of the DOE defendants is legally responsible in some manner for the events and  
4 happenings alleged in this Complaint.

5 9. Plaintiff is informed and believes that the actions of Defendant are in violation of the  
6 laws and public policy of the State of California and the County of Siskiyou and are inimical to  
7 the rights and interests of the general public. When, in this Complaint, reference is made to any  
8 act of the Defendants, such allegations shall be deemed to mean that the officers, directors,  
9 agents, employees, or representatives of said Defendants did, or authorized such acts, or failed to  
10 adequately or properly supervise, control or direct their employees and agents while engaged in  
11 the management, direction, operation, or control of the affairs of said business organization, and  
12 did so while acting in the scope of their employment or agency.

13 10. Plaintiff is informed and believes that at any and all times relevant hereto, each and  
14 every Defendant was acting as the agent or employee of each and every other Defendant.

15 11. Any reference to any act of Defendant RANCH, Defendant COLE, and Defendants  
16 Does 1 through 50, inclusive, or Defendants, meant that the act was done by Defendants, and  
17 each of them. All Defendants referenced in this Complaint are referenced hereinafter collectively  
18 as Defendant.

### 19 20 FACTUAL BASIS

21 12. The Stanshaw Creek and its tributaries referenced herein are located within the  
22 County of Siskiyou, State of California.

23 13. The Stanshaw Creek and its tributaries are "waters" of the State as that term is used  
24 in Section 5650 of the Fish and Game Code.

25 14. The Stanshaw Creek and its tributaries referenced herein are each a "stream" as that  
26 term is used in Section 1603 of the Fish and Game Code.

27 15. Tributaries to Stanshaw Creek are located in part on the property immediately  
28 adjacent to or on property owned, controlled and/or managed by Defendant in the County of

1 Siskiyou, State of California. Pollution to these waters of the State caused by siltation or other  
2 runoff would cause damage to these State waters and affect the wildlife population.

3 16. Stanshaw Creek is a tributary to the Klamath River and thence to the Pacific Ocean.  
4 Is a known spawning habitat for trout, salmon, coho, and countless other migratory fish and  
5 wildlife.

6 17. On or about January 21, 1999 Ranch, and Cole entered into a Streambed Alteration  
7 Agreement (SAA) with the Department of Fish and Game pursuant to Section 1603 of the Fish  
8 and Game Code for a project to divert water from Stanshaw Creek for power and to provide  
9 domestic water for cabins that are rented to recreational visitors, and a commercial guide  
10 business. The Agreement (exhibit A) requires, on page 4, that "[a]n adequate fish passage  
11 facility shall be incorporated into any barrier that obstructs fish passage."

12 18. Said Streambed Alteration Agreement was for the economic benefit of Defendant  
13 Cole, and Marble Mountain Ranch.

14 19. Plaintiff is informed and believes that in September and October 2000 Defendant has  
15 not only failed to construct adequate fish passage facilities, but he has so completely blocked the  
16 stream as to prevent any fish whatsoever from proceeding upstream from his obstruction in  
17 complete violation of the Streambed Alteration Agreement.

18 20. To date, the obstruction remains in an important fish producing stream prevent fish  
19 from migrating upstream for spawning purposes. This obstruction is taking place at the time of  
20 year when fish migration is the most important.

21 21. In and between September 2000 and October 2000 Defendant substantially diverted  
22 or obstructed the natural flow of tributaries to Stanshaw Creek and substantially changed the bed,  
23 channel or bank of tributaries to Stanshaw Creek without first notifying the Department of Fish  
24 and Game and contrary to or outside the scope of the Streambed Alteration Agreement and  
25 Amendment thereto.

26 22. In or between September 2000 and October 2000, Defendant deposited in, permitted  
27 to pass into, or placed where it can pass into tributaries to the Stanshaw Creek substances or  
28 material deleterious to fish, plant life, or bird life without first obtaining express authorization

1 pursuant to the requirements of Section 5650(b) of the Fish and Game Code.

2 **FIRST CAUSE OF ACTION**

3 **VIOLATION OF FISH AND GAME CODE SECTION 1603(a)**

4 (Unlawful Diversion/Obstruction of Streams or Substantial Change of Bed, Channel or Bank)

5 23. All preceding paragraphs and allegations are re-alleged as if fully set forth herein.

6 24. Between and including September 2000 and October 2000, Defendant commenced,  
7 conducted or continued activities that substantially diverted or obstructed the natural flow or  
8 substantially changed the bed, channel or bank of tributaries to the Stanshaw Creek

9 To wit:

10 a. On or about September 3, 2000, defendant Cole placed a diversion in Stanshaw Creek  
11 which so completely blocked the creek as to prevent any fish at all from passing  
12 upstream. Trout and fry as well as coho and salmon were found in stream below the  
13 diversion ditch. Stanshaw Creek is a known salmon and coho spawning stream and a  
14 spawning tributary to the Klamath River.

15 b. On or about September 3, 2000, defendant Cole was personally notified of the illegal  
16 stream diversion / obstruction and told to remove same. As of October 1, 2000,  
17 defendant has failed and refused and continues to fail and refuse to remove the  
18 obstruction.

19 c. Defendant has failed and refused, and continues to fail and refuse to construct  
20 adequate fish passage facilities at the site of the diversion.

21 25. Such activities were outside the scope, or contrary to the requirements, of the  
22 Streambed Alteration Agreement.

23 26. Defendant conducted the above-referenced activities without first notifying the  
24 Department of Fish and Game and contrary to the requirements of Cole's and Marble  
25 MOUNTAIN's Streambed Alteration Agreement.

26 27. Section 1603(a) of the Fish and Game Code provides that "[it] is unlawful for any  
27 person to substantially divert or obstruct the natural flow or substantially change the bed,  
28 channel, or bank of any river, stream, or lake designated by the department, or use any material



1 from the streambeds, without first notifying the department of that activity, except when the  
2 department has been notified pursuant to Section 1601.”

3 28. California Code of Regulations, Title 14, Section 720 designates all rivers, streams,  
4 and lakes in the State of California, including all rivers, streams, and streambeds which may have  
5 intermittent flows of water for purposes of Section 1603 of the Fish and Game Code.

6 29. Section 1603.1 of the Fish and Game Code provides for injunctive relief and civil  
7 penalties of not more than \$25,000 for each such violation of Section 1603 of the Fish and Game  
8 Code. Such Penalty is in addition to any other civil penalty imposed by law.

9 30. Plaintiff is informed and believes, and on such information and belief, alleges that  
10 Defendant conducted such activities on tributaries to the Stanshaw Creek in violation of Section  
11 1603 of the Fish and Game Code.

## 12 SECOND CAUSE OF ACTION

### 13 VIOLATION OF FISH AND GAME CODE SECTION 5650

14 (Unlawful to Place Where it May Pass into the Waters of this State,  
15 Any Material Deleterious to Fish, Plant or Bird Life)

16 31. All preceding paragraphs and allegations are re-alleged as if fully set forth herein.

17 32. At all times mentioned in this Complaint, Defendant constructed, used, operated or  
18 maintained a ranching and farming operation known as Marble Mountain Ranch in the County of  
19 Siskiyou, State of California.

20 33. Defendant unlawfully placed substances deleterious to fish, plant or bird life where it  
21 could pass into the waters of the State of California, or allowed substances deleterious to fish,  
22 plant or bird life to pass into the waters of the State of California in violation of Section  
23 5650(a)(6) of the Fish and Game Code. Said violations include the following:

24 a. On or about September 2, 2000, defendant constructed a rock barrier in Stanshaw  
25 Creek which inadequate causes the release of additional sedimentation into Stanshaw  
26 Creek, and so blocks the flow of that creek as to deplete the flow of the stream to the  
27 point erosion and sediment controls are ineffective thus exposing earthen soil and  
28

1 destabilizing slopes to the creek causing additional erosion into Stanshaw Creek.

2 34. The unlawful conduct and acts of the Defendant, as described above, demonstrate the  
3 necessity and legal basis for the imposition of civil penalties and injunctive relief pursuant to  
4 Section 5650.1 of the Fish and Game Code.

5 35. Fish and Game Code Section 5650.1 provides that every person who violates Section  
6 5650 is subject to a civil penalty of not more than \$25,000 for each violation. In addition, Fish  
7 and Game Code Section 5650.1 provides authority for this Court to issue a permanent injunction  
8 in order to restrain conduct without a showing that irreparable damage will occur if the injunction  
9 is not issued or that a legal remedy is inadequate.

### 10 **THIRD CAUSE OF ACTION**

#### 11 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

12 (Unlawful Business Practice)

13 36. All preceding paragraphs and allegation are re-alleged as if fully set forth herein.

14 37. On and between September 2, 2000 and October 6, 2000, Defendant engaged in  
15 conduct constituting unfair competition within the meaning of Section 17200 of the Business and  
16 Professions Code, which, in part, defines unfair competition as any unlawful, unfair or fraudulent  
17 business act or practice. Defendant's acts of unfair competition include, but are not  
18 limited to the following:

19 a. Violations of Section 1603 of the Fish and Game Code as previously alleged in this  
20 Complaint and incorporated herein by this reference as if set forth in full herein and is re-  
21 alleged as unlawful business acts and practices.

22 b. Violations of Section 5650 of the Fish and Game Code as previously alleged in this  
23 Complaint and incorporated herein by this reference as if set forth in full herein and is re-  
24 alleged as unlawful business acts and practices.

25 c. Violations of Section 5901 of the Fish and Game Code by placing a device that  
26 impedes the passage of fish in Stanshaw Creek.

27 44. The unlawful conduct and acts of Defendant in violation of the law, as described  
28 above, demonstrate the necessity and legal basis for the imposition of civil penalties and

1 injunctive relief pursuant to section 17200 of the Business and Professions Code.

2 45. Section 17200 of the Business and Professions Code provides as follows: "17200.  
3 Definition. As used in this chapter, unfair competition shall mean and include any unlawful,  
4 unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading  
5 advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of  
6 Division 7 of the Business and Professions Code."

7 46. Section 17206(a) of the Business and Professions Code provides as follows:  
8 "17206(a). Any person who engages, has engaged, or proposes to engage in unfair competition  
9 shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for  
10 each violation...."

11 47. Section 17203 of the Business and Professions Code states: "Any person who  
12 engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court  
13 of competent jurisdiction. The court may make such orders or judgments, including the  
14 appointment of a receiver, as may be necessary to prevent the use or employment by any person  
15 of any practice which constitutes unfair competition, as defined in this chapter,...."

16  
17 **WHEREFORE, Plaintiff prays for judgment as follows:**

18 1. That pursuant to Section 5650.1 of the Fish and Game Code, Defendant be ordered to  
19 pay a civil penalty of Twenty-Five Thousand Dollars (\$25,000) for each and every separate  
20 violation according to proof.

21 2. That Defendant, and Defendant's officers, directors, successors, members, agents,  
22 representatives, employees, and all persons who act under, by, through, on behalf of, or in  
23 concert with Defendant, or any item, with actual or constructive notice of any injunction or  
24 restraining order issued in this matter, be permanently restrained and enjoined from doing any of  
25 the following acts, directly or indirectly:

26 a. Depositing in or permitting to pass into, or placing where it can pass into, the waters of  
27 this State, any substance deleterious to fish, plant, and bird life, or other substance listed  
28 in Section 5650 of the Fish and Game Code, in violation of Fish and Game Code Section

1 5650.

2 b. Substantially diverting or obstructing the natural flow of any stream, river or lake,  
3 substantially changing the bank, channel or bed of any stream, river or lake, or using any  
4 materials from streambeds without first notifying the Department of Fish and Game in  
5 accordance with all applicable requirements of the Fish and Game Code.

6 3. That Defendant be required to comply with existing Streambed Alteration  
7 Agreement(s) and take all necessary action to correct and mitigate the damage caused by  
8 Defendant's actions as alleged in this Complaint.

9 4. That pursuant to Section 17206 of the Business and Professions Code, Defendant be  
10 ordered to pay a civil penalty in the amount of Two Thousand Five Hundred Dollars (\$2,500) for  
11 each and every separate violation of Section 17200 of the Business and Professions Code  
12 perpetrated by Defendant.

13 5. That appropriate injunctive relief issue pursuant to Section 17203 of the Business and  
14 Professions Code, including provisions enjoining and restraining Defendant, and each of them,  
15 and their agents, servants, employees, partners, associates, officers, representatives and all  
16 persons acting in concert with them, with actual or constructive notice of any injunction or  
17 restraining order issued in this matter, from engaging in acts of unfair competition in violation of  
18 Section 17200 of the Business and Professions Code, including, but not limited to, the practices  
19 set forth in preceding paragraphs in this Complaint.

20 6. That Plaintiff recover its costs of suit herein, including costs of investigation, pursuant  
21 to Section 17536 of the Business and Professions Code.

22 7. That the Court require Defendant to provide restitution to all government agencies that  
23 have expended resources in responding to, cleaning up, and investigating Defendant's violations  
24 of law.

25 8. That Plaintiff recover all costs incurred in this action.

26 9. For such other and further relief as the nature of the case may require, and the court  
27 deems proper, to fully and successfully dissipate the effects of the violation(s) of Fish and Game  
28 Code Section 1603 and 5650, and Business and Professions Code Section 17200, as well as any

1 other relief that the court may deem just and proper.

2 **NOTICE:** This complaint is deemed verified pursuant to the Code of Civil Procedure section  
3 446.

4 DATED: October 6, 2000.

5 Respectfully submitted,

6 PETER F. KNOLL  
7 DISTRICT ATTORNEY

8  
9  
10 *Lawrence R. Allen*

11 

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LAWRENCE R. ALLEN  
12 Deputy District Attorney  
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99-0040

Five Year Maintenance Agreement

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## AGREEMENT

### REGARDING PROPOSED ACTIVITIES SUBJECT TO CALIFORNIA FISH AND GAME CODE SECTIONS 1600/1606

1 **WHEREAS:**

2 1. Mr. Douglas T. Cole, of Somes Bar, California, representing the  
3 property owner, Marble Mountain Ranch, of Somes Bar (jointly referred to  
4 as "OPERATOR"), on January 21, 1999 notified (99-0040) the DEPARTMENT of  
5 Fish and Game (the DEPARTMENT) of the intent to divert or obstruct the  
6 natural flow of, or change the bed or banks of, or use materials from  
7 Stanshaw Creek, Siskiyou County, a water over which the DEPARTMENT  
8 asserts jurisdiction pursuant to Division 2, Chapter 6 of the California  
9 Fish and Game Code.

10 2. Fish and Game Code Sections 1600 et seq. make provisions for the  
11 negotiation of agreements regarding the delineation and definition of  
12 appropriate activities, project modifications and/or specific measures  
13 necessary to protect fish and wildlife resources.

14 3. The DEPARTMENT has determined that without the mitigative features  
15 identified in this agreement, the activities proposed in the OPERATOR's  
16 notification could substantially adversely affect fish and wildlife. The  
17 DEPARTMENT's representative, Ron Presley, inspected the site on February  
18 16, 1999 and has determined that resident trout and aquatic  
19 invertebrates would be the wildlife potentially affected by this project  
20 due to loss of stream habitat due to lower flows.

21 **NOW THEREFORE, IT IS AGREED THAT:**

22 1. If this agreement is found to be in conflict with any other provision  
23 of law or general conditions of public safety, it is void.

24 2. This agreement does not constitute or imply the approval or  
25 endorsement of a project, or of specific project features, by the  
26 DEPARTMENT of Fish and Game, beyond the DEPARTMENT's limited scope of  
27 responsibility, established by Code Sections 1600 et seq. This  
28 agreement does not therefore assure concurrence by the DEPARTMENT with  
29 the issuance of permits from this or any other agency. Independent  
30 review and recommendations will be provided by the DEPARTMENT as  
31 appropriate on those projects where local, state, or federal permits or  
32 environmental reports are required. This includes but is not limited to  
33 CEQA and NEPA project review. Any fish and wildlife protective or  
34 mitigative features that are adopted by a CEQA or NEPA lead agency or  
35 made the conditions for the issuance of a permit, for this project,  
36 become part of the project description for which this agreement is  
37 written.

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3 3. If the project could result in the "take" of a state listed rare,  
4 threatened or endangered species, OPERATOR has the responsibility to  
5 obtain from the DEPARTMENT, a California Endangered Species Act Permit  
6 (CESA 2081 Permit). The DEPARTMENT may formulate a management plan that  
7 will avoid or mitigate take. Pursuant to Fish and Game Code Section  
8 2090, a State lead agency shall consult with the DEPARTMENT to ensure  
9 that projects will not jeopardize the continued existence of any listed  
10 species. If appropriate, contact the DEPARTMENT CESA coordinator at  
11 (530) 225-2300.

12 4. To the extent that the provisions of this agreement provide for  
13 activities that require OPERATOR to trespass on another owner's  
14 property, they are agreed to with the understanding that OPERATOR  
15 possesses the legal right to so trespass. In the absence of such right,  
16 the agreement is void.

17 5. To the extent that the provisions of this agreement provide for  
18 activities that are subject to the authority of other public agencies,  
19 such as county use permits, said activities are agreed to with the  
20 understanding that all appropriate permits and authorizations will be  
21 obtained prior to commencing agreed activities.

22 6. All provisions of this agreement remain in force throughout the term  
23 of the agreement. Any provision of the agreement may be amended at any  
24 time provided such amendment is agreed to in writing by both parties.  
25 Mutually approved amendments become part of the original agreement and  
26 are subject to all previously negotiated provisions. Title 14,  
27 California Code of Regulations, Section 699.5(g) requires the OPERATOR  
28 to submit the sum equal to 50% of the fee of the existing agreement to  
29 amend an existing agreement.

30 7. The OPERATOR shall provide a copy of this agreement to all project  
31 contractors, subcontractors, agents, employees, and project supervisors.  
32 Copies of the agreement must be available at work sites during all  
33 periods of active work and must be presented to DEPARTMENT personnel  
34 upon demand until the project and/or monitoring period(s) are completed.

35 8. OPERATOR, contractor, or subcontractor are jointly and severely  
36 liable for compliance with the provisions of this agreement. Upon the  
37 DEPARTMENT'S determination of a violation of the terms of this  
38 Agreement, this Agreement shall be suspended or canceled, at the  
39 discretion of the DEPARTMENT and all activity must immediately stop  
40 until another agreement is made. Failure to comply with the provisions  
41 and requirements of this agreement and with other pertinent Code  
42 Sections including but not limited to Fish and Game Code Sections 5650,  
43 5652, 5937, and 5948, may result in prosecution.

44 9. OPERATOR agrees to provide the DEPARTMENT access to the project site  
45 at any time, to ensure compliance with the terms, conditions, and  
46 provisions of this agreement.

47 10. It is understood that the DEPARTMENT enters into this agreement for  
48 purposes of establishing protective features for fish and wildlife, in  
49 the event that a project is implemented. The decision to proceed with

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3 the project is the sole responsibility of OPERATOR, and is not required  
4 by this agreement. It is agreed that all liability and/or incurred  
5 costs related to or arising out of OPERATOR's project and the fish and  
6 wildlife protective conditions of this agreement, remain the sole  
7 responsibility of OPERATOR. OPERATOR agrees to hold harmless and defend  
8 the State of California and the DEPARTMENT of Fish and Game against any  
9 related claim made by any party or parties for personal injury or other  
10 damage.

11 11. OPERATOR assumes responsibility for the restoration of any fish and  
12 wildlife habitat which may be impaired or damaged either directly or,  
13 incidental to the project, as a result of failure to properly implement  
14 or complete the mitigative features of this agreement, or from  
15 activities which were not included in OPERATOR's notification.

16 12. The DEPARTMENT shall have continuing jurisdiction over the project  
17 site until all restoration of the site is complete.

18 13. The notification, project descriptions, all photos, and drawings  
19 submitted with the notification shall become part of this agreement, to  
20 define the scope of the proposed project. All work shall be done  
21 according to plans submitted to and approved by the DEPARTMENT. The  
22 OPERATOR shall notify the DEPARTMENT in writing of any modifications  
23 made to the project plans submitted to the DEPARTMENT. Any modification  
24 to the plans requires an amendment to this agreement. Changes to the  
25 original plans done voluntarily may result in the DEPARTMENT suspending  
26 or canceling this agreement. The OPERATOR must then submit a new  
27 notification.

28 14. The following provisions including any additional project features  
29 resulting from the above, constitute the limit of activities agreed to  
30 and resolved by this agreement. The signing of this agreement does not  
31 imply that OPERATOR is precluded from doing other activities, at the  
32 site. However, activities not specifically agreed to and resolved by  
33 this agreement are subject to separate notification pursuant to Section  
34 1601/03.

35 15. The OPERATOR shall notify the DEPARTMENT of the dates of  
36 commencement and completion of operations, three days prior to such  
37 commencement or completion, by telephone message to (530) 841-2557.

38 16. To the extent that the provisions of this agreement provide for the  
39 diversion of water, they are agreed to with the understanding that  
40 OPERATOR possesses the legal right to so divert such water. In the  
41 absence of such right, the agreement is void.

#### 42 FEDERAL JURISDICTION

43 The US Army Corps of Engineers (Corps) has permitting requirements  
44 for certain instream projects under Section 404 of the Federal Clean  
45 Water Act. If this project exceeds one acre of disturbance within the  
46 ordinary high-water mark of the stream and/or the stream's average



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3 annual flow exceeds five cubic feet per second, a permit may be required  
4 by the Corps. A Corps permit may also be required for the installation  
5 of rip rap that exceeds 500 linear feet at or over one cubic yard of  
6 material per linear foot. If there is any question regarding the  
7 possibility of your project meeting the above limitations, you should  
8 contact the Corps prior to beginning work. This Agreement in no way  
9 represents permitting requirements by the Corps. It is OPERATOR'S  
10 responsibility to contact the U.S. Army Corps of Engineers, and to  
11 comply with the provisions any 404 Permit issued, if required by the  
12 Corps.

13 For information, contact the US Army Corps of Engineers office in  
14 your area: San Francisco District, Eureka Office (707)443-0855.

15  
16 OPERATOR may have certain other responsibilities pursuant to the  
17 Federal Endangered Species Act resulting in mitigative project features  
18 required by the U.S. Fish and Wildlife Service or National Marine  
19 Fisheries Service.

20 **PROVISIONS**

21 Agreed work includes activities associated with the diversion of  
22 flows from Stanshaw Creek for irrigation, recreation, domestic, and  
23 small hydro-electric use. Construction includes the annual construction  
24 of a rock diversion dam (by hand) to entrain flows into the diversion  
25 ditch, and maintenance of a culvert/flume crossing on an unnamed  
26 ephemeral tributary to Stanshaw Creek. The project area is located in  
27 Siskiyou County (SW 1/4 of NE 1/4 of S 33, T 13 N, R 6 E) on property  
28 administered by the U.S. Forest Service. The diversion structure existed  
29 prior to this agreement.

30 **EQUIPMENT AND ACCESS**

31 Vehicles shall not be driven or equipment operated in water covered  
32 portions of a stream, or where wetland vegetation, riparian vegetation,  
33 or aquatic organisms may be destroyed. Except as otherwise provided for  
34 in the Agreement, all work shall be performed by hand/hand tools.

35 Access to the work site shall be via existing trails.

36 **WATER DIVERSION/STRUCTURES**

37 This Agreement does not authorize the construction of any temporary  
38 or permanent dam, structure, flow restriction or fill except as  
39 described in OPERATOR'S notification.

40 An adequate fish passage facility shall be incorporated into any  
41 barrier that obstructs fish passage.

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3 Except as otherwise specified in this Agreement, fill material for  
4 the annual diversion dam shall consist of only native, clean rock which  
5 will cause little or no siltation. If tarps, sand bags, or plastic  
6 sheeting are used to seal the diversion structure, the tarps, bags,  
7 and/or sheeting shall be removed before high seasonal flows return to  
8 prevent littering of the stream.

9 When any dam or artificial obstruction is being constructed,  
10 maintained, or placed in operation in the stream bed, flows to  
11 downstream reaches shall be allowed to pass downstream to maintain  
12 wildlife, plant life, and aquatic life below the dam in a healthy  
13 condition, and to allow fish migration, during all times that the  
14 natural stream flow would have supported aquatic life, pursuant to Fish  
15 and Game Code section 5937 and 5901.

16 Structures and associated materials not designed to withstand high  
17 seasonal flows shall be removed to areas above the normal high-water  
18 mark before the return of such seasonal flows.

19 No excavation in the live stream is allowed. "Live stream" shall  
20 be defined as that portion of the stream bed where flowing water is  
21 present or anticipated during the term of this agreement.

22 In ephemeral streams, all construction will be done while the work  
23 site is dry. Excavated material shall be placed outside the stream's  
24 normal high-water mark.

25 A culvert exists in the intersection of the diversion flume/ditch  
26 and an ephemeral stream. The culvert shall be maintained so as to resist  
27 washout. The up stream and down stream fill slopes shall feature rock  
28 slope protection (RSP) from the toe to the top of the fill. A fail soft  
29 dip shall be maintained where the fill meets original ground to allow  
30 topping flows to remain within the ephemeral stream channel. Rock  
31 dissipators shall be placed at the culvert outlet to prevent channel  
32 bed/bank scour. Upon the next occasion when the culvert washes out, the  
33 pipe alignment shall be corrected to remove the skew (It should be  
34 straight within the channel rather than pointing at the bank.).

35 **WATER QUALITY**

36 **EROSION, TURBIDITY, AND SILTATION**

37 Mud, silt, or other pollutants from diversion maintenance or other  
38 project-related activities shall not be discharged into the flowing  
39 stream or be placed in locations where it may be washed into the stream  
40 by high flows or precipitation.

41 Silty/turbid water shall not be discharged into the stream. Such  
42 water shall be settled, filtered, or otherwise treated prior to  
43 discharge back into the stream channel.

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3 The OPERATOR shall install adequate control devices to ensure that  
4 turbidity or siltation resulting from the project related activities  
5 does not constitute a threat to aquatic life.

6 Erosion control measures shall be utilized throughout all phases  
7 of operation where sediment runoff from exposed slopes threatens to  
8 enter waters of the State. At no time shall silt laden runoff be  
9 allowed to enter the stream or directed to where it may enter the  
10 stream.

11 Upon DEPARTMENT determination that turbidity/siltation levels  
12 resulting from project related activities constitute a threat to  
13 aquatic life, activities associated with the turbidity/siltation shall  
14 be halted until effective DEPARTMENT approved control devices are  
15 installed, or abatement procedures are initiated.

16 CHANNEL RESTORATION

17 FILL AND SPOIL

18 Rock, gravel, and/or other materials shall not be imported to,  
19 taken from or moved within the bed or banks of the stream except as  
20 otherwise addressed in this Agreement.

21 Fill length, width, and height dimensions shall not exceed those  
22 of the original diversion dam installation.

23 Fill shall be limited to the minimal amount necessary to  
24 accomplish the agreed activities. Except as otherwise specified in  
25 this Agreement, fill construction materials shall consist of native,  
26 clean, silt-free gravel or river rock.

27 No fill material, other than clean river rock/gravel, shall be  
28 allowed to enter the live stream.

29 No castings or spoil from the trenching or ditch cleaning  
30 operations shall be placed on the stream side of the ditch where it may  
31 be washed by rainfall into the stream.

32 The OPERATOR shall have readily available plastic sheeting or  
33 visquine and will cover exposed spoil piles and exposed areas to  
34 prevent these areas from losing loose soil into the stream. These  
35 covering materials shall be applied when it is evident rainy conditions  
36 threaten to erode loose soils into the stream.

37 CHANNEL BED STABILIZATION

38 If a stream channel has been altered during the operations, its  
39 low flow channel shall be returned as nearly as possible to pre-project  
0 conditions without creating a possible future bank erosion problem or a  
1 flat wide channel or sluice-like area. The gradient of the stream bed  
2 shall be returned to pre-project grade.

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3 BANK STABILIZATION

4 Areas of disturbed soils which slope toward a stream, shall be  
5 stabilized to reduce erosion potential. The OPERATOR shall plant  
6 seed, and heavily mulch all soils disturbed by the project prior to the  
7 return of seasonal rains. The OPERATOR shall consult with the U.S.  
8 Forest Service and use the U.S. Forest Service recommended plants,  
9 seeds, and mulch.

10 Where suitable vegetation cannot reasonably be expected to become  
11 established, rock slope protection (RSP) materials that will resist  
12 wash out shall be used for such stabilization. The bank stabilization  
13 material shall extend above the normal high-water mark. Any  
14 installation of RSP materials not described in the original project  
15 description shall be coordinated with the DEPARTMENT. Coordination may  
16 include the negotiation of additional Agreement provisions for this  
17 activity.

18  
19 VEGETATION

20 Disturbance or removal of vegetation shall not exceed the minimum  
21 necessary to complete the authorized operations. The disturbed  
22 portions of any stream channel within the high water mark of the stream  
23 shall be restored to their original condition under the direction of  
24 the DEPARTMENT.

25 CLEAN-UP

26 Structures and associated materials not designed to withstand high  
27 water flows shall be moved to areas above high water before such flows  
28 occur.

29 Any materials placed in seasonally dry portions of a stream that  
30 could be washed downstream or could be deleterious to aquatic life,  
31 wildlife, or riparian habitat shall be removed from the project site  
32 prior to inundation by high flows.

33 CONCURRENCE

34 Douglas T. Cole 4/28/99  
35 (signature) (date)

36 Douglas T. Cole  
37 Marble Mountain Ranch  
38 OPERATOR

9 Charles Konval  
0 Ron Presley (date)  
1 California DEPARTMENT of Fish and Game

608 R. Presley  
4/30/99

1 PETER F. KNOLL  
2 DISTRICT ATTORNEY  
3 Lawrence R. Allen (State Bar No.94773 )  
4 Deputy District Attorney  
5 Courthouse, 311 4<sup>th</sup> Street  
6 Yreka, California 96001  
7 Telephone: (530) 842-8125

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SISKIYOU

OCT - 6 2000

**Endorsed - T. Blackwell**  
DEPUTY CLERK

8 ATTORNEYS FOR PLAINTIFF

9  
10 THE SUPERIOR COURT OF THE  
11 STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SISKIYOU

12 THE PEOPLE OF THE STATE )  
13 OF CALIFORNIA, )  
14 Plaintiff, )

CASE NO. SC CV CV '00 - 1700

15 v. )

16 MEMORANDUM OF POINTS AND )  
17 AUTHORITIES IN SUPPORT OF )  
EX PARTE APPLICATION FOR )  
TEMPORARY RESTRAINING ORDER )  
AND ORDER TO SHOW CAUSE RE )  
PRELIMINARY INJUNCTION, )  
DECLARATION OF BRIAN BOYD. )

18 MORGAN TAYLOR COLE, )  
19 MOUNTAIN RANCH, )  
20 and DOES 1 through 50, )  
21 Defendants. )

DATE:  
TIME:  
DEPT:

22 I. STATEMENT OF THE CASE

23 This is an environmental prosecution lawsuit brought by the Office of the District Attorney  
24 pursuant to Fish and Game Code section 1603.1.

25 Defendants Morgan Taylor Cole owns and operates Mountain Ranch. Mountain Ranch is a  
26 business where visitors can rent cabins, use RV hookups, and go on guided trips of the area under  
27 defendant's direction.

28 In January 1999, defendant entered into a stream diversion agreement with the Department of  
Fish and Game. That agreement is attached as exhibit A to the complaint that has been filed with  
this action. These are referred to as "1603 agreements" in reference to Section 1600 *et. sep.* of

1 the Fish and Game Code dealing with stream diversions. In that agreement, at the bottom of  
2 page 4, specific reference is made to diversions that impede the ability of fish to migrate around  
3 the diversion. Specifically defendant is required to construct his diversion in such a manner as to  
4 allow the passage of fish, or he must build a fish ladder. The complete blockage of a stream is  
5 also a direct violation of Section 5901 which prohibits devices in streams which impede the  
6 passage of fish.

7 On September 2, 2000, Warden Brian Boyd examined the area of the diversion. Warden  
8 Boyd found a blockage that was not allowing the passage of fish. Indeed, the only water passing  
9 the diversion was that which percolated under the rocks. Defendant was warned and asked to  
10 remove the blockage to the extent fish could pass. Defendant has failed and refuses to comply  
11 with the diversion agreement, and Section 5901 in allowing enough water for fish passage. This  
12 is particularly important at this time of year due to low water flows and migratory patterns of  
13 fish.

14 Quite simply, Plaintiff is requesting an order from this court that allows the Department of  
15 Fish and Game to remedy this situation by removing enough of the obstruction to allow water  
16 and fish to pass.

17 The First Cause of Action alleges that the Defendant has commenced activities which have  
18 substantially diverted or obstructed the natural flow, or have substantially changed the bed,  
19 channel, or bank of a stream, river or lake, or used materials from the streambeds without first  
20 notifying the Department of Fish and Game, or prior to the Department of Fish and Game's  
21 determining that the activities will not substantially adversely affect an existing fish or wildlife  
22 resource.

23 The Second Cause of Action alleges that the Defendant has deposited in, permitted to pass  
24 into, or placed where it can pass into the waters of this state substances or material deleterious to  
25 fish, plant life, or bird life.

26 The Third Cause of Action alleges that the Defendants have committed an unfair business  
27

1 practice in violation of Section 17200 of the California Business and Professions Code.

2  
3  
4 **II THE DISTRICT ATTORNEY IS AUTHORIZED BY EXPRESS**  
5 **STATUTORY PROVISIONS TO OBTAIN RESTRAINING ORDERS**  
6 **RELATING TO VIOLATIONS OF THE FISH AND GAME CODE.**

7 Fish and Game Code section 1603.1 authorizes the District Attorney to bring a civil action on  
8 behalf of the People of the State of California.. Subdivision (e) also provides that a temporary  
9 restraining order, or other injunctive relief may be obtained without the necessity of alleging or  
10 proving at any state of the proceeding irreparable damage, or that the remedy at law is  
11 inadequate.

12 The District Attorney has the authority from both the statutory and common law of the State  
13 of California to investigate and secure injunctions relating to the matters involved in the instant  
14 case without alleging or proving irreparable injury. *Porter v. Fiske* (1946) 74 Cal.App.2d 332;  
15 *Paul v. Wadler* (1962) 209 Cal.App.2d 615. In *Porter v. Fiske*, the court stated:

16 "It was not necessary for respondent to allege or prove the existence of the usual  
17 equitable grounds of the issuance of an injunction nor to allege a threatened  
18 repetition of the acts. Where an injunction is authorized by statute, it is enough  
19 that the statutory conditions are satisfied...Appellant cannot complain of an  
20 injunction restraining her from violating the law."

21 Where the legislative body has specifically authorized injunctive relief against the violation  
22 of such a law, it has already determined as a matter of law that irreparable injury attends to the  
23 violation of the statute, and that injunctive relief may be the most appropriate way to protect  
24 against the injury. *Paul v. Wadler, supra*, 209 Cal.App.2d 615, 625. Therefore, the only showing  
25 that Plaintiff is required to make is that a danger exists that such conduct, prohibited and  
26 enjoined by a specified statute, will occur in the future because the determination that  
27 irreparable injury will occur if the conduct continues to occur has been already made by the  
28 California Legislature.

Any claims by Defendant that they have or will discontinue these violations should not be

1 considered by the court. Where a discontinued practice could be resumed, the prior practice may  
2 be the subject of a cease and desist order. *Beneficial Corporation v. F.T.C.* (3<sup>rd</sup> Cir., 1976) 542  
3 F.2d 611, 617, citing to *Feil v. FTC* (9<sup>th</sup> Cir., 1960) 285 F.2d 897, 886 n. 15. Courts must beware  
4 of efforts to defeat injunctive relief by protestations of repentance and reform. *United States v.*  
5 *Oregon State Medical Society* (1952) 343 U.S. 326, 333.

### 7 III. BOND IS NOT REQUIRED.

8 California Code of Civil Procedure section 995.20 specifies:

9 “Bond in action or proceeding; public entities not required to give

10 “Notwithstanding any other statute, if a statute provides for a bond in an action or  
11 proceeding, *including but not limited to a bond for the issuance of a restraining order or*  
12 *injunction*, appointment of a receiver, or stay of enforcement of a judgment on appeal, the  
following public entities are not required to give the bond and shall have the same rights,  
remedies, and benefits as if the bond were given:

13 “(a) The State of California, or *the people of the state*, a state agency, department, division  
14 commission, board, or other entity of the state, or a state officer in an official capacity or on  
behalf of the state.

15 “(b) A county, city or district, or public authority, public agency, or other political  
16 subdivision in the state, or an officer of the local public entity in an official capacity or on  
behalf of the local public entity.

17 “(c) the United States or an instrumentality or agency of the United States, or a federal officer  
18 in an official capacity of the United States or instrumentality or agency.”

19 (Emphasis added.)

20 Thus, by the plan terms of the statute, bond is not required of the people in the instant case.

21 (See also *City of San Francisco v. Cypress Lawn Cemetery* (1992) 11 Cal.App.4th 916, 14  
22 Cal.Rptr.2d 323 – Governmental entities are granted exemption from undertaking requirement  
23 ordinarily imposed upon private parties, and applies even where undertaking is required by  
24 statute.)

25 Code of Civil Procedure section 529(b) relates specifically to undertakings required for  
26 injunctive relief, and specifies that the undertaking requirement does not apply to:

27 “(3) A public entity or officer described in Section 995.220.”



1 Which, as noted above, includes actions brought on behalf of the People.

2  
3 **IV. CONCLUSION**

4 Defendant has engaged, and continues to engage in conduct which violates the law.  
5 Compliance with the environmental provisions is absolutely necessary to protect the public  
6 interest and the welfare of fish, wildlife and the environment. Defendant is aware of these  
7 violations. The Department of Fish and Game notified Defendant of the violations and asked  
8 Defendant to cease such violations. Accordingly, the court is respectfully urged to grant  
9 Plaintiff's motions for a Temporary Restraining Order and Order to Show Cause Re: Preliminary  
10 Injunction.

11  
12 Respectfully submitted,

13  
14  
15 **PETER F. KNOLL**  
16 **DISTRICT ATTORNEY**

17  
18 **DATED:** \_\_\_\_\_

19 *Lawrence R. Allen*  
20 **LAWRENCE R. ALLEN**  
21 **DEPUTY DISTRICT ATTORNEY**

22 **DECLARATION OF BRIAN BOYD**

23 I, BRIAN BOYD, declare:

24 That I am a game Warden with the California Department of Fish and Game. Attached  
25 hereto as exhibit E is a portion of an affidavit for search warrant which outlines my background  
26 training and experience as a warden. I am currently one of the resident wardens in the Happy  
27 Camp area in northwestern part of Siskiyou County. I have been so assigned for approximately  
28 two (2) years and I am familiar with the streams and out lying areas of my district.

1 That I am personally familiar with Stanshaw Creek. This is a stream which is a tributary to  
2 the Klamath River, which is well known as a prime salmon and steelhead spawning stream.  
3 Stanshaw Creek has a significant population of native trout. At the downstream end of  
4 Stanshaw, close to the Klamath River, pools form which serve as cold-water refuges for the coho  
5 and salmon on the migration up the Klamath River. At this time of year water flows are  
6 particularly low due to a rather dry summer, as well as the natural aspects of river flows at this  
7 time of year.

8 That on September 3, 2000, I responded to a private property owner complaint that all of the  
9 water of Stanshaw Creek was being diverted, and that the diversion structure was so large as to  
10 prevent fish from proceeding around the diversion. I went to the area, and found a rock diversion  
11 that was approximately three and a half feet tall leaving no possibility of any fish to jump or go  
12 around the dam. I found small trout fry below the dam and in the diverted channel. I contacted  
13 defendant, Douglas Cole, to discuss the diversion. Cole admitted placing the diversion in the  
14 manner that it was situated, and he claim he had a legal right to use the water. I checked the  
15 diversion permit, (exhibit A to the complaint) and discovered that Cole did not have the right to  
16 create a diversion that prohibited or impeded fish passage. I advised defendant that he was in  
17 violation of his agreement, and he was also in violation of Sections 1603 and 5901 of the Fish  
18 and Game Code. I have been subsequently advised that defendant has not, to this day, removed  
19 the obstruction.

20 That at the site on September 3<sup>rd</sup>, I took photographs which are attached to this declaration.  
21 These photos are true and accurate depictions of the events shown in the photos. Exhibit A ,  
22 picture 1 is taken from top of the rock diversion. The rocks in the bottom center of the photo are  
23 the diversion itself, while the water flowing is that flowing into the diversion ditch. Picture A-2  
24 is looking downstream and depicts the water beneath the diversion. The only water passing the  
25 diversion is percolating through the rocks into the small pond depicted in A-2. Exhibit B-1 is  
26 downstream of the diversion showing the natural flow of the river. B-2 is from the top of the  
27

1 diversion depicting the diversion ditch and the strong flow of water in the ditch. Exhibit C-1 is  
2 upstream of the diversion, looking at the diversion. To the right of the photo is the natural stream  
3 bed which has no water in it at all. To the left and center (where people are standing) is the  
4 diversion ditch and flow. C-2 is downstream from the diversion looking back, and up toward the  
5 diversion. This depicts the water percolating under the rocks into the natural stream bed. Exhibit  
6 D is essentially the same photo as B-1 which shows that the only water through the diversion is  
7 that which is percolating under the rocks.

8 That based on my training and experience, this diversion is completely diverting Stanshaw  
9 Creek, and is completely blocking the stream. It is impossible for any fish to bypass this  
10 obstruction, and the only water bypassing the obstruction is that which is managing to percolate  
11 through. The obstruction is causing the refuge pools at the end of the Creek to become so  
12 depleted that the coho and salmon will not be able to use these pools in their migration.

13 That I declare under penalty of perjury that the foregoing is true and correct. Executed this  
14 6<sup>th</sup> day of October 2000, at Yreka, California.

15  
16 BRIAN BOYD  
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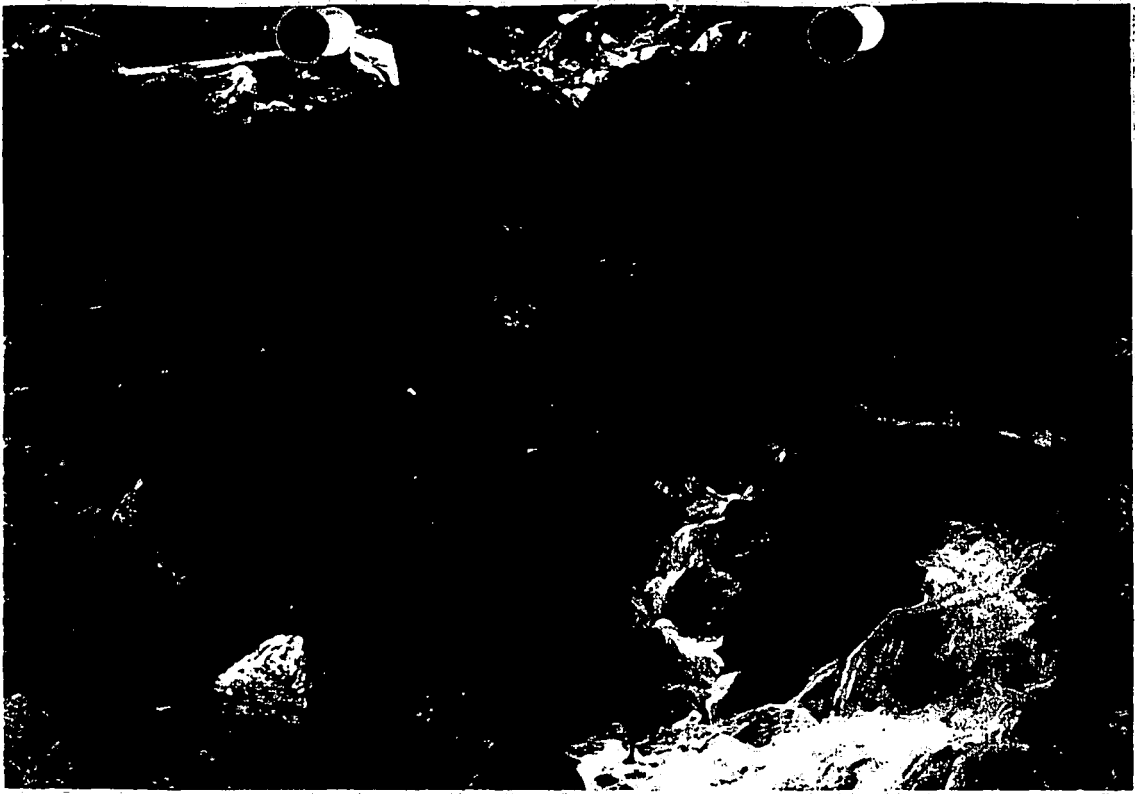
WR-5

2



Exhibit A

000688



WR-5  
①



②

Exhibit B

000689

①



②



Exhibit C



- Same photo  
as 2-1  
Shows only water  
through dam is  
what is percolating  
underneath.

Exhibit D

## AFFIDAVIT FOR SEARCH WARRANT

Your affiant, Brian S. Boyd, is a Fish and Game Warden for the State of California. As such he is a duly appointed Peace Officer under the authority of Penal Code Section 830.2 and Fish and Game Code Section 856. Warden Boyd has been so employed as Fish and Game Warden since July 31, 1999. In addition to conducting several investigations during his course of employment, Warden Boyd has assisted in serving three search warrants and has conducted two court ordered probation searches in his employment as a State Game Warden.

Warden Boyd recently graduated from the Fish and Game Academy in Napa California ranked second in a class of thirty. Warden Boyd graduated from Humboldt State University with a B.S. degree in Wildlife Management in May of 1997 with an overall G.P.A. of 3.41. Warden Boyd graduated from Shasta Community College in Redding with an A.A. in General Education focusing in the Administration of Justice with academic honors. Warden Boyd has been employed in the past as a Wildlife Biologist for three years working on the inventory, management, and protection of both endangered, threatened, and sensitive species in Humboldt County. Warden Boyd has also overseen a stream monitoring program for a large lumber company in Humboldt County. This monitoring program included the identification of fish species present, sampling, and monitoring of streams spawning condition. Warden Boyd has a working knowledge in the identification of anadromous fish species and their habitats. Warden Boyd has a history of employment in the outdoors as evidenced by his past employment as a Logger, Ranch Hand, and Surveyor.

Warden Boyd has been an avid hunter and fisherman for over 18 years. Warden Boyd has 15 years of experience hunting big game in California, Idaho, Washington, and Nevada. Warden Boyd has taken numerous Black Bear, Mule Deer, and Blacktail Deer in various settings and conditions. Warden Boyd is very knowledgeable regarding the field and custom butchering of big game as well as the logistics of the processing, transportation, and storage of large quantities of wild meat. Warden Boyd has been an avid fisherman since childhood and has fished for trout, steelhead, chinook and coho salmon, as well as many other warm water fishes in many of the western states and pacific ocean under various condition and methods.

Exhibit E



1. PETER F. KNOLL  
2. DISTRICT ATTORNEY  
3. Lawrence R. Allen (State Bar No. 94773)  
4. Deputy District Attorney  
5. Siskiyou County Courthouse  
6. 311 Fourth Street  
7. Yreka, California 96097  
8. Telephone: (530) 842-8125

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SISKIYOU

OCT - 6 2000

BY: **Endorsed - T. Blackwell**  
DEPUTY CLERK

ATTORNEYS FOR PLAINTIFF

8 THE SUPERIOR COURT OF THE  
9 STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SISKIYOU

11 THE PEOPLE OF THE STATE  
12 OF CALIFORNIA,  
13 Plaintiff,  
14 v.  
15 DOUGLAS TAYLOR COLE,  
16 MARBLE MOUNTAIN RANCH,  
17 and DOES 1 through 50.  
Defendant.

CASE NO. SC CV '00 - 1700  
TEMPORARY RESTRAINING  
ORDER AND ORDER TO SHOW  
CAUSE RE PRELIMINARY  
INJUNCTION  
DATE:  
TIME:  
DEPT:

19 To Defendants Douglas Taylor Cole, Marble Mountain Ranch, and DOES 1 through 50:  
20 Based on the Ex Parte Application, the Memorandum of Points and Authorities, and the  
21 declarations of Brian Boyd, it appears to the satisfaction of the Court that this is a proper case for  
22 granting a Temporary Restraining Order. *Further, although not required by law to do so, the*  
23 *Court finds that unless the Temporary Restraining Order prayed for by the People is granted,*  
24 *great or irreparable harm will result to Plaintiff before the matter can be heard on notice.*

25 IT IS HEREBY ORDERED that the above-named Defendants, appear in this Court located at  
26 311 Fourth Street, Yreka, California, on 11/6/00, at 100<sup>AM</sup>, or as soon thereafter as the  
27 matter may be heard why you and your agents, employees, and representatives should not be  
28 restrained during the pendency of this action from engaging in, committing, or performing,

1 directly or indirectly, the following acts:

2 1. Engaging in certain acts in violation of Fish and Game Code section 1603, including but  
3 not limited to the following:

4 A. Blocking or diverting Stanshaw Creek in any manner.

5 B. Commencing activities which have substantially diverted or obstructed the natural  
6 flow, or have substantially changed the bed, channel, or bank of a river, stream, or  
7 lake, or have used materials from the streambeds without first notifying the  
8 Department of Fish and Game, or prior to the Department of Fish and Game's  
9 determining that the activities will not substantially adversely affect an existing fish or  
10 wildlife resource.

11 C. Depositing in, permitting to pass into, or placing where it can pass into the waters of  
12 this state substances or material deleterious to fish, plant life, or bird life.

13 2.. Prohibiting access by means of locked gates, threats, or any other means of any Fish  
14 and Game personnel including, but not limited to, wardens, biologists, engineers, environmental  
15 specialists, or any other persons assisting the Department of Fish and Game in evaluating,  
16 analyzing, conducting repair work, or taking whatever measures necessary to prevent further  
17 destruction or degradation of Stanshaw Creek.

18 3. Prohibiting access of any person or equipment of the Department of Fish and Game,  
19 or any person acting at their direction in removing any obstructions on Stanshaw Creek, which in  
20 the discretion of the Department of Fish and Game is necessary to allow fish passage, water  
21 passage, and any other activity necessary to sustain fish, plant or wildlife in, or around Stanshaw  
22 Creek, or its tributaries.

23 IT IS FURTHER ORDERED that pending the hearing and determination of the Order to  
24 Show Cause, the above-named Defendants and Defendants' agents, employees, and  
25 representatives are hereby enjoined from engaging in or performing, directly or indirectly, the  
26 acts listed above. Bond is not required of Plaintiff (CCP 995.220).

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IT IS FURTHER ORDERED that copies of the Summons and Complaint and this Order to Show Cause and Temporary Restraining Order and supporting documents be served on Defendants on or before 10/10/00. The Defendants must file and serve a response on or before 10/23/00. Any additional papers filed by the People must be filed on or before 10/30/00.

DATED: 10/6, 2000

ROGER T. KOSEL  
JUDGE OF THE SUPERIOR COURT



# State Water Resources Control Board



**Winston H. Hickox**  
Secretary for  
Environmental  
Protection

**Division of Water Rights**  
901 P Street • Sacramento, California 95814 • (916) 657-0765  
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000  
FAX (916) 657-1485 • Web Site Address: <http://www.swrcb.ca.gov>  
Division of Water Rights: <http://www.waterrights.ca.gov>

**Gray Davis**  
Governor

In Reply Refer  
to:331:YM:29449

**OCT 12 2000**

T. James Fisher, et al.  
c/o Jeffery J. Swanson  
2515 Park Marina Drive, Suite 102  
Redding, CA 96001

APPLICATION 29449 OF COLE, STANSHAW CREEK TRIBUTARY TO  
KLAMATH RIVER IN SKISIIYOU COUNTY

In response to our request dated April 4, and August 2, 2000, you have submitted a Statement of Water Diversion and Use claiming a riparian water right, therefore, your protest is accepted. No further action is required by you at this time.

By copy of this letter, the applicant is instructed to answer your protest within 15 days from the date of this letter unless an extension of time is obtained. Please let us know promptly if you and the applicant reach agreement and you withdraw your protest. If you have any questions, please contact me at (916) 657-1965.

**ORIGINAL SIGNED BY:**

Yoko Mooring  
Engineering Associate  
Application Unit

cc: Doug Cole  
92520 Highway 96  
Somes Bar, CA 95568

SURNAME  PRO-ACPT (9-99)	gm 10/4/00	CLD 10-11-00		000696
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# State Water Resources Control Board

FILE  
29449

## CONTACT REPORT DIVISION OF WATER RIGHTS

**SUBJECT:** Application 29449

**DATE:** 11/14/00

**TIME:** 15:15

**DIVISION PERSONNEL:** Robert E. Miller, EAS

**INDIVIDUAL (S) / AGENCY CONTACTED:** Larry Allen  
Circuit Prosecutor

**TELEPHONE NUMBER:** (530)226-0572

### CONVERSATION DESCRIPTION:

LA returned my call from earlier today. I asked LA what the status of the case was: A Temporary Restraining Order (TRO) was issued b/c Cole was in violation of the law and irreparable damage was being done to Stanshaw. This was done to protect Warden Boyd for enforcing the action, and the warden then removed rocks to allow fish passage. A hearing was held and the court issued a Preliminary Injunction (PI) against Cole. Cole is allowed until November 18, 2000 to explain why a PI should not be imposed. So far, Cole has submitted documents unrelated to the citation, submitting only documents relating to his supposed pre-14 water right and his Application to Appropriate. A civil complaint has been filed, in which LA will seek permanent injunctive relief (permanent compliance), penalties ranging from \$25,000 to \$50,000, and may seek more payments for damages to the fishery. Cole has been working with Mr. Tocher, who is an attorney and the downstream water user and an acquaintance of LA, to resolve this case. Apparently Mr. Tocher has advised Cole to seek counsel more familiar with water right and environmental law. I told LA that is a good idea since Mr. Tocher does not seem familiar with these laws and will soon be under the scrutiny of the SWRCB since Tocher's diversion is unauthorized and illegal. LA will attend a case management conference in January 2001 and a status conference in June 2001 and predicts this case will go to court soon after that. LA then told me that I should be expecting a copy of the court documents shortly and that he will cc me on documents in the future.

I told LA that Cole seems very confused with this court process and I asked if it would be appropriate for me to tell Cole what I know about the case. He said it would be OK to tell Cole what LA is seeking, but that LA himself does not want to speak with Cole on the phone on this matter. LA has already spent a considerable amount of time discussing this issue with Mr. Tocher and that all of Cole's questions should be directed to Cole's counsel.

← COLE RETURNED MY CALL ON THE MORNING OF 11-15-00 AND I TOLD HIM THIS.

**ACTION ITEMS:** Call Cole and tell him that the SWRCB will not try to get him out of this case, tell him what LA will be seeking, and that any other matter on this injunction should be directed to his counsel.

SURNAME	RFM	11-15-00			
---------	-----	----------	--	--	--

000697

# State Water Resources Control Board

WR-5  
FILE  
29449

## CONTACT REPORT DIVISION OF WATER RIGHTS

**SUBJECT:** Application 29449

**DATE:** 11/14/00

**TIME:** 15:00

**DIVISION PERSONNEL:** Robert E. Miller, EAS

**INDIVIDUAL (S) / AGENCY CONTACTED:** Brian Boyd  
DFG Game Warden

**TELEPHONE NUMBER:** Office (530)493-2030; Cell (530)598-1706

### CONVERSATION DESCRIPTION:

BB returned my call from earlier today. I asked if he was the warden that went out to Cole's to make the diversion structure passable to fish. He said that he was; he went to the diversion, made it passable to fish, then cited Cole under the authority of Fish and Game Code sections 1603 and 5901. I asked if the water level dropped in the diversion ditch after doing so and BB said it dropped about an inch.. BB also said that Cole's hydroplant was not operating, and that BB's work on the diversion would not have lessened the flow so much as to make the hydroplant inoperable. It should be noted here that no one has yet been out to the Cole property when his hydroplant was operating. BB mentioned that Cole became irate after receiving the citation and mentioned to BB that he has the appropriate water rights [I told BB that he has not yet secured his right]. BB told Cole that he is not concerned with water rights, since that does not pertain to the Fish and Game Code.

SURNAME	REM 11-15-00			
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000698

# State Water Resources Control Board

FILE  
29449

## CONTACT REPORT DIVISION OF WATER RIGHTS

**SUBJECT:** Application 29449

**DATE:** 11/14/00

**TIME:** 14:30

**DIVISION PERSONNEL:** Robert E. Miller, EAS

**INDIVIDUAL (S) / AGENCY CONTACTED:** Dennis Maria  
DFG Fisheries Biologist

**TELEPHONE NUMBER:** (530)841-2552

**CONVERSATION DESCRIPTION:**

DM returned my call from earlier this morning. I asked if he knew what was going on with the Cole project and he was up to date with recent activities. I asked if he has worked on the project recently and he had not been very involved lately. He did say that after our field visit, he offered to help Cole obtain funding for fish grants, but that Cole failed to take him up on the offer. DM hoped that Cole would be willing to try again next year, but has yet to express and interest in doing so. DM mentioned that Cole had called him today to ask what he could do to get DFG to dismiss their protest, and DM deferred that matter to DFG's water rights specialist, Jane Vorpagel [who is on vacation until December 11, 2000]. I informed DM that I had created a Field Report after our visit and he asked for a copy to add to his file.

**ACTION ITEMS:** Email Field Report to DM

SURNAME	<i>RE Miller</i>	<i>11-15-00</i>		
---------	------------------	-----------------	--	--

# State Water Resources Control Board

FILE  
WR-8  
29449

## CONTACT REPORT DIVISION OF WATER RIGHTS

**SUBJECT:** Application 29449

**DATE:** 11/14/00

**TIME:** 12:30

**DIVISION PERSONNEL:** Robert E. Miller, EAS

**INDIVIDUAL (S) / AGENCY CONTACTED:** Margaret Tauzer  
NMFS Biologist

**TELEPHONE NUMBER:** (707)825-5174

### CONVERSATION DESCRIPTION:

I phoned MT to ask if she and Jane had been working on terms to dismiss their protest. She admitted she has not worked on it much, but promised to begin doing so. She plans to apply the February median flow requirements similar to the manner the NMFS does along the Central California Coast. She did say she may allow some sort of summer diversion, but not much, if any, over and above the 0.5 cfs allowed for Cole's pre-14 right. She also plans to do some research on hydroplant operations so she can recommend to Cole ways to lessen his diversion while still generating the same amount of cheap power.

I also informed her of the court action that has been taken against Cole, and she was glad enforcement action was being taken. I told her that Tim Broadman of NMFS enforcement was planning on visiting the Cole site on 11/13/00. She said she saw TB today and he did not mention anything to her. [I later left a message with TB, but he has yet to return my call].

SURNAME	REM 11-15-00			
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000700



FILE  
WR-5  
29449

# State Water Resources Control Board

## CONTACT REPORT DIVISION OF WATER RIGHTS

**SUBJECT:** Application 29449

**DATE:** 11/14/00

**TIME:** 09:10

**DIVISION PERSONNEL:** Robert E. Miller, EAS

**INDIVIDUAL (S) / AGENCY CONTACTED:** Doug Cole - Applicant

**TELEPHONE NUMBER:** (530) 469-3322 or (800) 552-6284

**CONVERSATION DESCRIPTION:**

I took call from DC. He informed me of the injunction that was filed against him by the Department of Fish and Game. Heavy pressure was put on DFG by Konrad Fisher. I told him that I was aware of it b/c KF had brought it to my attention. DC is supposed to send a legal response to DFG, but does not want to hire an attorney. DC claims that his family is on the verge of bankruptcy and he wants the lawsuit to disappear. He asked what the Board could do on his behalf. I told him it was a little different for DFG to file a civil lawsuit against him while his Application was pending, but that I didn't think there was much we could do for him. I told him I would talk with Ross Swenerton and get back to him. (Ross later explained that we have no authority in this matter since it was a violation of the Fish and Game Code, not the Water Code, that is being enforced).

DC told me that a DFG Game Warden had been ordered to go out and remove some of the diversion rocks to allow for the passage of fish. That Warden's name is Brian Boyd, who can be reached at (530)493-2030 or his cell at (530) 598-1706. DC said that without this water, he will be forced out of business, since he cannot afford to run his diesel generator full time. He mentioned that he has not gotten enough water in recent months to run his hydroelectric generator.

I asked DC if he has tried to resolve some fish issues with NMFS and DFG, and he said he had not. He asked for a list of contacts, (which I have already faxed to him) and he will call them today.

**ACTION ITEMS:** Call Cole back after talking with Jane Vorpapel, Margaret Tauzer, Tim Broadman, Brian Boyd, and Larry Allen.

SURNAME	REM 11-14-00			
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FILE  
WP-5  
29449

# State Water Resources Control Board

## CONTACT REPORT DIVISION OF WATER RIGHTS

**SUBJECT:** Application

**DATE:** 11/09/00

**TIME:** 11:00

**DIVISION PERSONNEL:** Robert E. Miller, EAS

**INDIVIDUAL (S) / AGENCY CONTACTED:** Tim Broadman  
NMFS Enforcement

**TELEPHONE NUMBER:** (707)445-0456

**CONVERSATION DESCRIPTION:**

TB returned my call. I wanted to touch bases and determine if NMFS has plans to cite Cole with taking coho salmon. TB said that proving take is difficult and may not be possible in this circumstance. He plans on visiting the project on Monday 11/13/00 and will inform me of his findings.

**ACTION ITEMS:** If I do not hear from TB, call him within a week to see what came out of his field visit.

SURNAME	RE/Md 11-9-00			
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FILE  
WR-5

29449

# State Water Resources Control Board

## CONTACT REPORT DIVISION OF WATER RIGHTS

**SUBJECT:** Application 29449, Cole

**DATE:** 11/09/00

**TIME:** 09:30

**DIVISION PERSONNEL:** Robert E. Miller, EAS

**INDIVIDUAL (S) / AGENCY CONTACTED:** Larry Allen  
Circuit Prosecutor

**TELEPHONE NUMBER:** (530)226-0572

**CONVERSATION DESCRIPTION:**

I phoned LA because I had heard from Konrad Fisher that he had become involved in the Cole Project. LA informed me that he is a Circuit Prosecutor, essentially a Deputy District Attorney, for numerous rural counties in California. His position is funded by DFG and EPA, but he answers to each County's DA. He prosecutes environmental crimes.

LA has filed a preliminary injunction against Cole for not following the term in the 1600 Agreement with DFG which calls for the diversion structure to allow for the passage of fish. He will forward any documents pertaining to this project to me. This was essentially an introductory call, in which we familiarized each other with our respective roles in this project; we exchanged phone numbers, and mailing and email addresses. I told him I would send him a copy of my Environmental Field Report from 07/26/00 and that we'd be in touch in the future.

**ACTION ITEMS:** Email Report to [cdaa@snowcrest.net](mailto:cdaa@snowcrest.net).

SURNAME	RCMA 11-9-00			
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FILE  
WR-5  
29449

# State Water Resources Control Board

## CONTACT REPORT DIVISION OF WATER RIGHTS

**SUBJECT:** Application 29449, Cole

**DATE:** 11/02/2000

**TIME:** 11:30

**DIVISION PERSONNEL:** Robert E. Miller, EAS

**INDIVIDUAL (S) / AGENCY CONTACTED:** Konrad Fisher  
Environmental/prior right protestant

**TELEPHONE NUMBER:** (530)335-7099

**CONVERSATION DESCRIPTION:**

I took call from KF regarding the Cole's Application. KF had recently seen a letter from Harry Schueller allowing Cole to divert 0.5 cfs under a Pre-1914 right. KF was wondering if we could shut down what water Cole was diverting over and above that 0.5 cfs. I told him that the Board policy has been to allow someone to divert if they have filed an Application and are actively seeking a Permit. KF then wondered if an Applicant would be allowed to continue diverting even if a downstream riparian right holder protested. I said that since KF's diversion is so small, it should not be affected by Cole's diversion and he seemed to agree and switched to environmental concerns. He wondered how to shut down Cole's diversion since it was dewatering Stanshaw Creek and killing coho salmon. I told him that NMFS could cite Cole for take of a threatened species. KF said that NMFS is not enforcing this project as actively as he would like, because it needs to be proved beyond a reasonable doubt that Cole's diversion is causing coho to be killed.

He mentioned that the Forest Service has become involved and gave reference to the letter sent by Bill Heightler. KF said that the Forest Service will not act on that letter and that they have accepted Cole's proof of a diversion before 1910 (the year the Forest was created).

KF also mentioned that the 1600 Agreement has been enforced by DFG, and fish can now pass by Cole's diversion structure.

I asked KF if he had filed a complaint and he said that he had not. Since the Division was in the middle of our move to the Cal/EPA Building, and I didn't have the new numbers handy, I told KF that I would call once we were situated and give him the phone number to call to get formal complaint information.

**ACTION ITEMS:** Call KF and give him my new phone number and Complaints phone number. Call Bill Heightler to check status of Cole's Use Permit or exemption. Call NMFS to determine if they are trying to enforce take of threatened species.

SURNAME	REM 11-6-00			
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29449  
WR-8  
FILE

# State Water Resources Control Board

## CONTACT REPORT DIVISION OF WATER RIGHTS

**SUBJECT:** Application 29449, Cole

**DATE:** 10/19/2000

**TIME:** 11:15

**DIVISION PERSONNEL:** Robert E. Miller, EAS

**INDIVIDUAL (S) / AGENCY CONTACTED:** Bill Heitler, USFS District Ranger  
Six Rivers NF, Orleans RD

**TELEPHONE NUMBER:** (530)627-3291

**CONVERSATION DESCRIPTION:**

Mr. Heitler returned my call from yesterday. BH informed me that he sent a letter to Mr. Cole stating that the USFS has no record of a Special Use Permit for Cole's diversion and ditch. Mr. Cole must provide evidence that the ditch has been in continuous use since 1910, the year the Forest Service was created. If he fails to do so, the diversion structure and ditch must be removed within 30 days of the date of the letter. BH also mentioned that there may be a letter from President Taft specifically mentioning and authorizing this project as it was circa 1910. If there is such a letter, BH is still leaving the burden of proof on Cole. I asked for a copy of the letter which he will send ASAP.

BH also mentioned that the NMFS and DFG seemed to be leaning on him to provide a Use Permit b/c NMFS and DFG are reluctant to act on this project.

NOTE: In a Contact Report dated 10/18/2000, Mr. Heitler's name was incorrectly spelled and Mr. Heitler was incorrectly listed as the Ukonom District Ranger.

**ACTION ITEMS:** Call back after Cole's 30-day deadline to determine if any documents were provided and to find out the USFS's updated position on this project.

SURNAME	R.E.M. 10/19/00			
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A 29449  
COLE

**TITLE 23 WATER RESOURCES CONTROL BOARD**

§ 777

(Register 87, No. 10—3-7-87)

(p. 74.1)

**772. Issuance of Separate Permits and Licenses.**

**HISTORY:**

- 1. New section filed 12-7-67 as organizational and procedural; effective upon filing (Register 67, No. 49).
- 2. Renumbering and amendment of Section 772 to Section 836 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

**Article 13. Right of Access**

**775. Right of Access Over Lands Not Owned by Applicant.**

When the applicant will need to occupy property or to use existing works not owned by him, it will generally be sufficient for the applicant to state in writing that the consent of the owner has been obtained, provided there is no denial. When the owner will not consent, the board may require satisfactory evidence of the applicant's ability through condemnation proceedings or otherwise to secure the necessary right of access before the application will be approved. For good cause shown, the board may allow reasonable time for the applicant to negotiate with the owner for the necessary right of access.

NOTE: Authority cited: Section 1058, Water Code. Reference: Sections 1250, 1252, 1253, 1257 and 1260, Water Code.

**HISTORY:**

- 1. Renumbering and amendment of Section 747 to Section 775 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 60, No. 5.

**776. Where Public Agency Permission or Approval Is Required.**

If the proposed project will require a permit, license, or approval from another public agency or officer and it becomes evident that regardless of the action taken by the board, such permit, license, or approval could not be secured from the proper agency, the application will be rejected.

NOTE: Authority cited: Section 1058, Water Code. Reference: Sections 1250 and 1255, Water Code.

**HISTORY:**

- 1. Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5). (Ed. Note—Similar to former Section 778.)
- 2. Amendment filed 3-19-64; effective thirtieth day thereafter (Register 64, No. 6).
- 3. Renumbering and amendment of former Section 776 to Section 840, and renumbering and amendment of Section 748 to Section 776 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

**776.5. Requests for Extension of Time Under Permit.**

**HISTORY:**

- 1. New section filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).
- 2. Repealer filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).

**777. Right of Access Over Lands Where Title is Disputed.**

The board will not undertake to determine title to land or the right to occupy or use land or other property. A dispute concerning applicant's title or right to occupy or use land or other property necessary for consummation of the proposed appropriation is not cause for denial of an application. A protest based solely upon such disputed title or right will ordinarily be rejected as not presenting an issue within the board's jurisdiction; provided that the board may tempo-

YOKO.

10/18/00

THE USFS HAS BECOME INVOLVED W/ THIS PROJECT AND IS NOT HAPPY WITH THE DIV. DAM & DITCH GOING THROUGH THEIR PROPERTY. THEY HAVE ASKED COLE TO PRODUCE DOCUMENTS TO SUPPORT HIS CLAIMED USFS EASEMENT AND IF NOT WILL DESTROY HIS DAM & DITCH. IT MAY HAVE ALREADY HAPPENED. IF SO APPLY § 776. I'LL KEEP YOU POSTED.

000706

REM

29449  
WR-5  
FILE

# State Water Resources Control Board

## CONTACT REPORT DIVISION OF WATER RIGHTS

**SUBJECT:** Application 29449, Cole

**DATE:** 10/18/2000

**TIME:** 13:15

**DIVISION PERSONNEL:** Robert E. Miller, EAS

**INDIVIDUAL (S) / AGENCY CONTACTED:** Margaret Tauzer  
National Marine Fisheries Service

**TELEPHONE NUMBER:** (707)825-5174

### CONVERSATION DESCRIPTION:

I phoned Ms. Tauzer to ask whether she had recently been to the Cole Project or if any progress has been made on the NMFS/DFG recommendations for altering the project. She informed that that Chuck Glasgow and Tim Broadman of NMFS have been involved and that they have brought this project to the further attention of the US Forest Service. Apparently a letter has been sent to Cole by Orleans District Ranger Bill Heightler stating that Cole must provide proof of his permit with the USFS for his diversion structure on USFS property. If he does not provide proof within 30 days, then the structure will be taken down by the USFS. I advised MT that if this happened, the SWRCB would reject Cole's application pursuant to §776 of Title 23 (Where Public Agency Permission or Approval is Required). She did mention there may have been a grandfather provision in the letter sent by the USFS.

*Ukonom  
R.D.*

Ms. Tauzer also mentioned that Tim Broadman may be pursuing ESA Section 9 enforcement action against Cole.

**ACTION ITEMS:** Call Bill Heightler or Jon Grunbaum of the USFS to determine their position and obtain a copy of the letter sent to Cole.

SURNAME	RSM 10-18-00			
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United States  
Department of  
Agriculture

Forest  
Service

Six Rivers  
National  
Forest

Orleans Ranger District  
P.O. Drawer 410  
Orleans, CA 95556-0410  
(530) 627-3291 Text (TTY)  
(530) 627-3291 Voice

WR-5

KEM  
FILE  
29449

File Code: 2700

Date: October 5, 2000

Doug and Heidi Cole  
Marble Mountain Ranch  
Somes Bar, CA 95568

Dear Doug and Heidi,

It has come to my attention that you have been diverting water from Stanshaw Creek to use at the Marble Mountain Ranch. We have no record of a Special Use Permit for either the diversion structure or the ditch that transports water from Stanshaw Creek to your property. A recent site inspection of the ditch leads me to believe that it has been in use for a considerable period of time. If the ditch has been in continuous use since before 1910, date the Klamath National Forest was proclaimed, you may be eligible for a free special use permit.

The National Marine Fisheries Service and California Department of Fish and Game are concerned that the amount of water being diverted from Stanshaw Creek is adversely affecting a threatened and endangered species, specifically the coho salmon.

Since it appears that your diversion structure and ditch are not authorized, they must be removed within 30 days. If you have permits or other legal documents that provide for this use, the Forest Service needs copies so we can determine if this an appropriate use of National Forest land, authorize the use and provide for a diversion structure that will allow flows adequate for the protection of the salmon.

If you have questions feel free to contact me at the Orleans District Office.

Sincerely,

*/s/ William M. Heitler*

WILLIAM M. HEITLER  
District Ranger

