



State Water Resources Control Board

MAR 30 2012

In Reply Refer
To: MMcCarthy: 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.)

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. 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

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