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## State Water Resources Control Board

### **NOTICE OF STATUS CONFERENCE**

The State Water Resources Control Board  
Administrative Hearings Office  
will hold a Status Conference on the  
pending proceeding regarding alleged waste, unreasonable use,  
unreasonable method of use,  
and unreasonable method of diversion of water by  
**Douglas and Heidi Cole and Marble Mountain Ranch**

from Stanshaw Creek in Siskiyou County.

**The Status Conference will begin on  
February 2, 2023, at 9:00 am**

and will be held by Zoom teleconference.

You may participate in the Zoom teleconference by using the link:  
<https://waterboards.zoom.us/j/92046900211?pwd=Mk5sa1R6dURXb2xVSDN2aWN6VE9Odz09> with Meeting ID: 920 4690 0211 and Passcode: 076023  
or by calling in at: +16699009128,,92046900211#,,,,\*076023# US (San Jose)

**Interested members of the public who would like to watch this status conference  
without participating may do so through the Administrative Hearings Office  
YouTube channel, accessible by clicking on “Watch AHO Hearings” at:**  
[https://www.waterboards.ca.gov/water\\_issues/programs/administrative\\_hearings\\_office/](https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/)

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E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

## **BACKGROUND**

Douglas and Heidi Cole (Respondents) own and operate Marble Mountain Ranch, a commercial guest ranch located near Somes Bar in Siskiyou County. Respondents divert surface water for ranch operations at a single point of diversion on Stanshaw Creek, a tributary to the Klamath River. Respondents divert up to 3 cubic feet per second (cfd) under a pre-1914 claim of right reported under Statements of Diversion and Use S015022 and S016375, and up to 10 acre-feet per year reported under Small Domestic Use Registration D030945.

On July 17, 2013, the Division of Water Rights (Division) of the State Water Resources Control Board (State Water Board or Board) received a complaint alleging that the Respondents were diverting water at rates exceeding those authorized by their pre-1914 claim of right. The complaint also alleged that Stanshaw Creek was being dewatered in most summers, causing impacts to public trust resources. The Division opened an investigation of the Respondents' diversions, and coordinated with the North Coast Regional Water Quality Control Board (Regional Board), which was investigating water quality issues related to the Respondents' diversions from Stanshaw Creek and discharges to nearby Irving Creek.

On August 30, 2016, the Division issued a draft order to the Respondents containing: (1) conclusions that Respondents' diversions constitute waste, unreasonable use, unreasonable method of use, and unreasonable method of diversion of water, (2) conclusions that Respondents' diversions cause unreasonable harm to public trust resources, and (3) corrective actions with interim and final implementation deadlines.

In an August 30, 2016 letter to the State Water Board's Executive Director, the Division asked the Board to schedule a hearing on the draft order. The Division's letter stated that the parties could request postponement of the hearing if the Respondents complied with the corrective actions and schedule in the draft order. On June 9, 2017, the State Water Board issued a notice of public hearing after the Respondents did not implement the corrective actions and did not request postponement of the hearing.

Board Member Steven Moore held the public hearing in this proceeding on November 13 through 16, 2017. During the hearing, Mr. Moore and Board staff members heard testimony and received evidence. Eight parties participated in the hearing and submitted closing briefs: the Prosecution Team, the Respondents, the Karuk Tribe, the National Marine Fisheries Service, the California Department of Fish and Wildlife, the Old Man River Trust, the California Sportfishing Protection Alliance, and the Klamath Riverkeeper.

The evidentiary record and hearing documents for this matter are available on the Water Board AHO-FTP site (see the 'ADMINISTRATIVE RECORD' section of this notice), and the Board's website at:

[https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/hearings/marblemountain/](https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/marblemountain/)

## **ASSIGNMENT TO THE ADMINISTRATIVE HEARINGS OFFICE**

Effective July 1, 2019, Water Code section 1110 established the Administrative Hearings Office (AHO) within the State Water Board. Water Code section 1112, subdivision (c)(2), provides that the Board may assign an adjudicative hearing to the AHO. Water Code section 1112, subdivision (c)(3), provides that AHO hearing officers may perform additional work requested by the Board, including, but not limited to, presiding over hearings on non-adjudicative matters, mediations, and overseeing investigations.

On December 9, 2021, Erik Ekdahl, Deputy Director for the Division, sent a memorandum to Eileen Sobeck, the Board's Executive Director, which recommended that she assign this matter to the AHO to assist the Board in resolving this matter. (Mr. Ekdahl did not participate in any of the Division's Enforcement Section's actions in this proceeding.) On December 9, Ms. Sobeck issued a memorandum to the AHO, assigning this matter to the AHO for further proceedings, including preparation of a proposed order and transmittal of it to the Board of the Board's consideration.

On January 7, 2022, the AHO notified all parties on the service list for the 2017 public hearing that this proceeding had been assigned to the AHO.

## **HEARING OFFICER AND HEARING TEAM**

An AHO Hearing Officer will preside over any hearing, and supervise all other AHO actions, in this proceeding. Other members of the AHO may be present and assist the hearing officer throughout this proceeding, except that Skyler Anderson, an environmental program manager in the AHO, who was a witness for the Prosecution Team in the 2017 Public Hearing, will not participate as a member of the hearing team in this proceeding. No member of the AHO hearing team will discuss any substantive or major procedural issues, including any controversial procedural issue, regarding any aspect of this proceeding with Mr. Anderson.

The AHO hearing officer and other AHO staff members may consult with staff of the Board's Division of Water Rights, attorneys in the Board's Office of Chief Counsel, members of the executive management of the State Water Board, and State Water Board members, to discuss or deliberate on matters relevant to this proceeding. The hearing officer and other AHO staff will not communicate about this proceeding with any member of the Division's Enforcement Section or any other State Water Board staff member who worked with, or is working with, the Enforcement Section in this proceeding.

## **DETERMINATION OF COMPLEX MATTER; ADDITIONAL PROCEEDINGS**

The hearing officer deems this matter complex under Water Code section 1114(d)(1)(A) and (D). After reviewing the administrative record, the hearing officer will establish a hearing management plan and monitor the proceeding to ensure timely disposition under Water Code section 1114(d)(3).

## **STATUS CONFERENCE**

The AHO hearing officer will hold a status conference on the date and at the time specified on the first page of this notice by Zoom teleconference. No in-person appearances will be allowed. The status conference will be held and electronically recorded by Zoom teleconference. The hearing officer will prepare a status conference order after the conference. The AHO will not retain a court reporter for the status conference. Any party may arrange for a court reporter at the party's own expense.

During the status conference, the AHO hearing officer will discuss the following issues with the parties' representatives:

1. What is the current status of the Respondents' diversion, conveyance, and discharge facilities?
2. Have the Respondents continued to divert water from Stanshaw Creek since the 2017 public hearing? If so, at what rates and annual amounts?
3. What is the current status of the Respondents' hydropower facilities and usage of those facilities?
4. Have the operations and water demand for Marble Mountain Ranch changed since the 2017 public hearing? If so, how?
5. Have the Respondents completed any of the tasks described in the Division's August 30, 2016 draft order?
6. Have the Respondents complied with the Regional Board's Cleanup and Abatement Order?
7. Has the Division of Water Rights conducted any site inspection since the 2017 public hearing? Do any parties want the AHO's schedule for this proceeding to include time for a site inspection?
8. Should the AHO accept supplemental briefs or hold supplemental hearing days to hear evidence based on new information or any changes in circumstances since the 2017 public hearing?
9. If the AHO holds supplemental hearing days, what should the supplemental hearing issues be?
10. Do the Prosecution Team and Respondent want to attempt to negotiate a settlement agreement?
11. Should an AHO hearing officer, who then would not otherwise be involved in this proceeding, conduct a mediation with the parties to help them attempt to negotiate a settlement agreement?

12. Are there any other issues that the parties would like the AHO hearing officer to consider during the status conference?

### **NOTICES OF INTENT TO APPEAR; UPDATED SERVICE LIST**

Any person or entity that wants to participate in this status conference must file a Notice of Intent to Appear (NOI), using the form attached to this notice, with the AHO before the deadline listed below.

If the AHO does not receive an NOI from the Respondents or an NOI from the Division of Water Rights Prosecution Team before the deadline specified below, then the AHO may cancel or postpone the status conference, and may take further actions in this proceeding, including preparing a proposed order and transmitting it to the Board for the Board's consideration, without any further input from the party that does not file an NOI. If any of the other parties who participated in the 2017 Public Hearing does not submit an NOI before the deadline specified below, then the AHO may take further actions without any further input from that party.

After the status conference, the AHO will issue a status conference order and an updated service list, which the AHO will use for future notices in this proceeding. The AHO will include in this updated service list only the people and entities that have filed new NOIs or otherwise have advised the AHO that they want to continue to be on the service list for this proceeding. If any party wants to continue to receive AHO notices regarding this proceeding, then that party must advise the AHO in writing, using one of the methods listed below, that the party wants to continue to receive AHO notices regarding this proceeding. A party does not need to send copies of the party's request to the other parties. The AHO will add all such requests it receives to the administrative record for this proceeding.

The AHO encourages parties to agree to accept electronic service (by e-mail) of all documents regarding this proceeding. If a party is not willing to do this, then the party may check the appropriate box on the NOI form. If this box is not checked, then the AHO will assume that the party agrees to accept electronic service. Parties that do not agree to accept electronic service will experience delays in receiving documents by U.S. Mail from the AHO and other parties.

### **STATUS CONFERENCE STATEMENTS**

The AHO encourages any party that wants to participate in the status conference to file a status conference statement addressing each of the status conference issues listed above. Parties shall file status conference statements with the AHO and serve copies on the other parties listed in the attached service list by the deadline listed below. The AHO will post the statements on the Water Board AHO-FTP site in the folder for this matter and advise the parties on the new service list when the AHO has done this.

## **NOI and Status Conference Deadlines and Schedule**

Deadline for filing NOIs and status conference statements, with proofs of service.	<b>January 26, 2023, 1:00 pm</b>
Status conference date and time.	<b>February 2, 2023, 9:00 am</b>

### **SUBMITTAL OF DOCUMENTS TO AHO AND OTHER PARTIES**

All documents submitted to the AHO, including NOIs and status conference statements, shall be addressed and submitted by one of the following methods (with proofs of service, as discussed above):

By Email (preferred method)	<a href="mailto:AdminHrgOffice@waterboards.ca.gov">AdminHrgOffice@waterboards.ca.gov</a> with subject line "Marble Mountain Ranch"
By Mail:	State Water Resources Control Board Administrative Hearings Office P. O. Box 100 Sacramento, CA 95812-0100
By Hand Delivery (see instructions below):	Joe Serna Jr. CalEPA Building Administrative Hearings Office c/o Water Rights Records Unit 1001 I Street, 2nd Floor, Room 114 Sacramento, CA 95814

Service of documents by hand-delivery may be more difficult or delayed due to building or office closures. Please plan ahead if you wish to hand deliver documents. Any hand-delivered submittals must be date-and-time stamped by the Division of Water Rights Records Unit personnel before the submittal deadline. Persons delivering submittals to the Records Unit must first check in with CalEPA Building lobby security personnel on the first floor of the CalEPA Building and obtain authorization to go to the Water Rights Records Unit on the second floor.

### **AHO WEBPAGE AND NOTICES**

Subject to legal limitations, including the requirements for internet website accessibility in Government Code section 11546.7, the AHO will post all of its notices and other AHO documents regarding these proceedings on the AHO's internet webpage at [https://www.waterboards.ca.gov/water\\_issues/programs/administrative\\_hearings\\_office/](https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/) Any interested person or entity may sign up to receive all AHO notices at [https://www.waterboards.ca.gov/resources/email\\_subscriptions/swrcb\\_subscribe.html](https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html)

## **STATUS CONFERENCE LIVE-STREAM AND RECORDING**

The status conference will be live streamed through the Administrative Hearings Office YouTube channel, accessible by clicking on the link provided below. After the conclusion of the conference, a recording of the YouTube live-stream of the conference will be available on the Administrative Hearings Office YouTube channel. These recordings will include automatic captions for accessibility.

The live stream and recordings may be accessed at the following link:

<https://www.youtube.com/channel/UCM-gmipRyd7Nw-g8l-C7Nig/videos?view=57m>

## **ADMINISTRATIVE RECORD**

The AHO has copied documents from the public records the State Water Board's Division of Water Rights Hearings Unit has maintained that may be relevant to this proceeding. The AHO has included these documents in the initial administrative record for this proceeding. The AHO has posted files of these documents on the FTP site in the folder for this hearing. Instructions on how to access the FTP site are on the AHO's webpage at:

[https://www.waterboards.ca.gov/water\\_issues/programs/administrative\\_hearings\\_office/docs/2021/2021-07-09\\_ftp\\_sites.pdf](https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2021/2021-07-09_ftp_sites.pdf).

Some of these documents are also available on the State Water Board's Hearings Program webpage at:

[https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/hearings/marblemountain/](https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/marblemountain/)

## **PROHIBITION ON EX PARTE COMMUNICATIONS**

As discussed in the AHO's January 7, 2022 Notice of Assignment, all parties are prohibited from having any *ex parte* communications with any members of the AHO hearing team. (See Wat. Code, §§ 1110, subd. (c), 1113; Gov. Code, §§ 11430.10-11430.80.) The AHO has posted a discussion of *ex parte* communications on the AHO's webpage at:

[https://www.waterboards.ca.gov/water\\_issues/programs/administrative\\_hearings\\_office/docs/2021/2021-07-06\\_webpage\\_faq.pdf](https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2021/2021-07-06_webpage_faq.pdf). (See response to FAQ 16.)

If any party or interested person wants to communicate with any member of the hearing team, or any Board member, at any time while this proceeding is pending regarding any procedural or substantive issue related to this proceeding, then that party or interested person shall make such communication in writing (by e-mail or letter) and serve all parties listed on the service list for this proceeding with copies of the communication and include a proof of service demonstrating such service of the written communication to the AHO. Until the AHO issues an updated service list, parties should use the service list attached to this notice. A party may provide this proof of service through a formal proof of service or by other verification. For e-

mails, the verification shall be a list of the e-mail addresses of the parties or their representatives in an electronic mail "cc" (carbon copy) list. For letters, the verification shall be a list of the names and mailing addresses of the other parties or their representatives in the cc portion of the letter.

Any such communication shall be sent to the AHO by e-mail to: [AdminHrgOffice@waterboards.ca.gov](mailto:AdminHrgOffice@waterboards.ca.gov), or by letter addressed to:

State Water Resources Control Board  
Administrative Hearings Office  
P.O. Box 100  
Sacramento, CA 95814-0100

If the AHO receives any communication regarding this proceeding that is addressed to the AHO, a Board member, or any other member of the hearing team, then the AHO will file a copy of the communication in the appropriate folder within the AHO-FTP folder for this proceeding.

Please do not attempt to communicate by telephone or in person with any AHO hearing team member regarding any procedural or substantive issue concerning this proceeding, because other parties would not be able to participate in such communications. If oral communications with any members of the AHO hearing team are necessary to discuss any procedural or substantive issue, then the AHO will set up a conference call in which representatives of all parties may participate. Any party may request such a conference call at any time using the written communications protocols described above.

December 19, 2022

/s/ Nicole Kuenzi  
Nicole Kuenzi, Hearing Officer

Enclosures:

- Notice of Intent to Appear Form
- Service List



**NOTICE OF INTENT TO APPEAR FORM**

\_\_\_\_\_ (name of participant) plans to participate in the status conference regarding the pending matter of alleged waste, unreasonable use, unreasonable method of use, and unreasonable method of diversion of water by **Douglas and Heidi Cole and Marble Mountain Ranch**

**which is scheduled to begin on February 2, 2023, at 9:00 am.**

Name (type or print):

\_\_\_\_\_

Represented party (if applicable):

\_\_\_\_\_

Mailing Address:

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Optional:

I/we decline electronic service of hearing-related materials.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## SERVICE LIST

Division of Water Rights  
Kenneth Petruzzelli  
State Water Resources Control Board  
Office of Enforcement  
801 K Street, 23<sup>rd</sup> Floor  
Sacramento, CA 95814  
[kenneth.petruzzelli@waterboards.ca.gov](mailto:kenneth.petruzzelli@waterboards.ca.gov)

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