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GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

AUG 3 0 2016

CERTIFIED MAIL

Douglas Cole, et al.

100 Tomorrow Rd.

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guesstranch@marblemountainranch.com

CERTIFIED MAIL NUMBER: 7003 1680 0000 2965 6939

RETURN RECEIPT REQUESTED

SUBJECT: CORRECTIVE ACTIONS NECESSARY TO CORRECT ALLEGED WASTE AND UNREASONABLE USE OF WATER BY DOUGLAS AND HEIDI COLE AND MARBLE MOUNTAIN RANCH FROM STANSHAW CREEK IN COUNTY OF SISKIYOU

Dear Mr. Cole, et al.:

On July 17, 2013 the State Water Resources Control Board's (State Water Board) Division of Water Rights (Division) received a complaint alleging that you were diverting water in excess of your pre-1914 claim of right and as a result dewatering Stanshaw Creek in most summers and harming public trust resources. On December 17, 2014, Division staff met with you for a facility tour to observe your water diversion and use of water from Stanshaw Creek. Division staff conducted a second site inspection on February 12, 2015, together with staff from the North Coast Regional Water Board (Regional Water Board). During the inspection, Regional Water Board and Division staff observed evidence of ditch failures, an inadequate diversion headgate to control the amount of water diverted from Stanshaw Creek into the diversion ditch, and hydropower operation resulting in significant discharges to Irving Creek.

By certified mail dated December 3, 2015, the Regional Water Board gave you notice of violation and draft Cleanup and Abatement Order (CAO) describing water quality violations and prescribing corrective actions. The letter also included the Division's report of inspection identifying that your diversion of water constituted a waste and unreasonable use, and unreasonable methods of diverting water, as well as a violation of public trust. The Division's report of inspection also prescribed corrective actions. The letter stated that the Regional Water Board and the Division had completed their investigations and would pursue formal enforcement action if you failed to respond to the letter in 30 days and substantially address the concerns outlined in the Regional Water Board's draft CAO and the Division's report of inspection.

You responded with a letter dated January 19, 2016 with a preliminary scope of work and time schedule. After evaluating your response and discussing the matter with your legal counsel, the Regional Water Board and the Division concluded that your response failed to substantially address their concerns. In a letter dated February 12, 2016, the Regional Water Board and the Division notified you that they would pursue formal enforcement action, but also encouraged you to nonetheless pursue corrective actions.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

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You responded again by letter dated March 24, 2016 and identified corrective actions that you are willing to take and when such actions would be achieved. However, some of the dates you identified have past and the corrective actions have not been taken.

Therefore, to ensure that you and the Division agree on specific correction actions that must be taken by certain dates, the Division is requesting a hearing to adopt a Draft Order finding that you are diverting water in violation of Article X, section 2 of the California Constitution and section 100 of the California Water Code.¹ Enclosed is the Draft Order Finding Waste, Unreasonable Method of Use, and Unreasonable Method of Diversion of Water and Ordering Corrective Actions (Draft Order).² The Draft Order alleges there is substantial evidence that you are violating Article X, section 2 of the California Constitution, and Water Code section 100, which provide that the right to water from any natural stream shall be limited to reasonable beneficial use and that such right does not extend to the waste or unreasonable use of water. Under Water Code section 275, the State Water Board shall take all appropriate proceedings or actions to prevent the misuse of water in this State. Title 23, Division 3, Article 22, section 857 of the California Code of Regulations authorizes any interested person or the State Water Board, upon its own motion, to hold a hearing to determine if any misuse of water is occurring or has occurred.

Pursuant to Title 23, Division 3, Article 22, section 857, Division staff is recommending that by **June 30, 2018**, you should take prescribed corrective actions to cease misusing water and harming public trust resources. The Division has established a time schedule for project milestones and are requiring you to submit quarterly reports. The time schedule and reporting requirement is based on the scope of work and time schedule you provided in your March 24, 2016 letter. In summary, the Division requests that you:

1. Install a water diversion control mechanism at the point of diversion;
2. Measure diversions;
3. Return diverted water that is not put to beneficial use or water that is put to non-consumptive use back to Stanshaw Creek;
4. Eliminate unnecessary and unreasonable conveyance losses in the conveyance system;
5. Implement the bypass flows recommended by the National Marine Fisheries Service letter dated August 3, 2016 and install a measuring device, or devices if necessary, to demonstrate these flows are provided downstream;
6. Cease adverse impacts to public trust resources and habitat; and
7. Consult with the California Department of Fish and Wildlife to determine whether a fish screen to prevent fish entrapment should be installed or whether implementation of an alternative method such as point of diversion design modification should be used to prevent fish entrapment.

The time schedule's first interim deadline is October 15, 2016. The Division has therefore requested that the State Water Board hold a hearing within 90 to 120 days after October 15, 2016. If you meet the project milestones for the October 15, 2016 interim deadline, the Division requests that the parties, upon concurrence, request the State Water Board to postpone the hearing date. If the State Water Board holds a hearing, you will have an opportunity at the

¹ All references to the "Water Code" shall refer to the California Water Code.

² For the purposes of title 23, Division 3, Article 22 of the California Code of Regulations, "misuse of water" or "misuse" means any waste, unreasonable use, or unreasonable method of diversion of water. (23 Cal. Code Regs., § 855, subd. (b).)

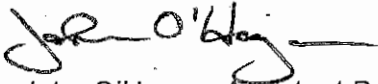
AUG 30 2016

hearing to present evidence and make arguments to demonstrate you are not misusing water or harming public trust resources. A final order issued by the State Water Board would be enforceable through administrative civil liability, a cease and desist order, or through referral to the Attorney General.

Prior to the Division's request for hearing, on August 5, 2016 the Regional Water Board issued Cleanup and Abatement Order No. R1-2016-0031 for you to eliminate the threat of future discharges and to clean up and abate the effects of discharges of soil, rock and miscellaneous debris into Irving Creek, Stanshaw Creek, and the Klamath River. The Cleanup and Abatement Order will address alleged water quality violations you cause with your diversion facility and conveyance system. The State Water Board's adoption of the Draft Order will address the alleged misuse of water and public trust impacts, if you do not voluntarily comply with the Division's milestones and this matter goes to a hearing. Complementary, coordinated actions using both the State Water Board's water right and public trust enforcement authority and the Regional Water Board's water quality authority are necessary to fully address your alleged water quality violations, misuse of water, and public trust impacts.

If you have any questions regarding this Petition for Hearing, please contact Kathy Mrowka, Manager, Enforcement Section at (916) 341-5363 or Kathy.Mrowka@waterboards.ca.gov; or Kenneth Petruzzelli, Senior Staff Counsel, Office of Enforcement, at (916) 319-8577 or Kenneth.Petruzzelli@waterboards.ca.gov.

Sincerely,



*John O'Hagan, Assistant Deputy Director
Division of Water Rights*

Enclosures:

Draft Order WR 2017-00XX-DWR Finding Waste, Unreasonable Method of Use, and
Unreasonable Method of Diversion of Water and Ordering Corrective Actions
Division of Water Rights Report of Inspection
North Coast Water Quality Control Board Notice of Violation
North Coast Water Quality Control Board Cleanup and Abatement Order No. R1-2016-0031
North Coast Water Quality Control Board Report of Inspection
National Marine Fisheries Service Recommended Bypass Flows

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