

July 11, 2017

VIA U.S. MAIL & EMAIL

Steven Moore
Vice Chair
State Water Resources Control Board
1001 I Street, 2nd Floor
Sacramento, CA 95814

Re: Douglas and Heidi Cole, Marble Mountain Ranch Public Hearing Scheduled for August 22, 2017

Dear Mr. Moore:

On June 9, 2017, the State Water Resources Control Board (“State Water Board”) posted a Notice of Public Hearing (“Notice”) scheduled for August 22, 2017, regarding Douglas and Heidi Cole’s (the “Coles”) water rights related to their property and business, Marble Mountain Ranch (“Ranch”), located outside of Happy Camp. The Coles did not receive that Notice until June 12, 2017. When the Coles received the Notice, I was unavailable to advise them, as I was out of the country through June 23, 2017. For the reasons detailed below, the Coles seek a postponement of the hearing until December 2017, at the earliest.

First, the Coles own and operate the Ranch as a dude ranch offering hiking, horseback riding, rafting, fishing, and other outdoor activities to guests at the Ranch throughout the year. In addition to serving as guides for all of the activities offered, the Coles also provide all meals and accommodation services for their guests at the Ranch. A majority of the Coles’ business occurs during the time period of Memorial Day weekend through the Thanksgiving holiday, generally the time most outdoor, tourist oriented businesses experience their busiest seasons. In order to operate their business and provide the services that generate their livelihood, the Coles must be present at the Ranch from late May through late November of each year, operating their business seven days a week. The focus of the Coles’ business during the summer season is a variety of outdoor activities, while the fall season focuses on fly fishing excursions based at the Ranch. Doug Cole leads all fly fishing excursions as well.

Beyond the Coles need to be present at the Ranch to continue to operate their business during their busiest seasons, there are also a number of factors that make it impossible to adequately prepare and appear at the hearing as scheduled on August 22, 2017. As previously mentioned, I was out of the country at the time the Notice was delivered and was unable to advise the Coles with regard to the Notice at that time. Upon my return, and after discussion with the Coles, they have decided to actively defend their water rights through the hearing process; however, the delay has severely hampered the Coles' ability to prepare all of the necessary evidence and witnesses that will be required for this hearing. They are not only unable to prepare for the hearing as scheduled on August 22, 2017, but the July 25, 2017, deadline to complete "service of all parties' exhibits, exhibit identification indices, and statement of service" is impossible to meet.

The Coles have had to retain new consultants from the time that they began the process of identifying and potentially implementing resource improvements at the Ranch. Their original consultants, named as witnesses on the July 6, 2017, notice of intent to appear, Joey Howard and Will Harling, elected to move on from the project at the Ranch as a consequence of the North Coast Regional Water Quality Control Board's Cleanup and Abatement Order and the State Water Board's Draft Order (collectively, "Orders"). The original consultant team was funded through a grant program while working cooperatively with the various state and federal agencies to develop a solution and implement resource improvements, but with the issuance of the Orders, the grant money is no longer available. In addition to the lack of funding, the Orders also required that the Coles seek out a new consultant team because there were significant delays and a lack of responsiveness to the Coles' concerns by the original consultant team since the Coles were not the party that retained those consultants, the grant funding organization was the retaining entity. Thus, the Coles must engage those individuals to detail their efforts related to the Ranch and seek out the assistance of their new team of consultants, also named on the July 6, 2017, notice of intent to appear. This effort cannot be completed by the July 25, 2017, deadline to serve all parties' exhibits, exhibit identification indices, and statements of service even if there had not been a delay between when the notice of public hearing being posted and the ability of the Coles to discuss their options with their counsel.

Additionally, as the Coles' counsel, my schedule also prohibits me from participating in a public hearing on the Coles' behalf on August 22, 2017. I am in trial in the middle of September. To adequately prepare for that trial, I am unavailable from mid-August until the end of the trial, which is likely to be no earlier than September 15, 2017.

Finally, we have also been in contact with Mr. Petruzzelli, the attorney for the prosecution team, to discuss the need to reschedule the August 22, 2017, hearing date. He has indicated that based on his knowledge of the Coles' business requirements, there is some willingness to reschedule the hearing date for outside the Coles' busy season.

I would appreciate a response to this request before the July 25, 2017, deadline to provide service of all parties' exhibits, exhibit identification indices, and statements of service. Please contact me with any questions regarding this request at barbara@churchwellwhite.com or (916) 468-0625.

Regards,

Churchwell White LLP



Barbara A. Brenner

KAF/dmg

cc: Kenneth Petruzzelli (via email)
Mara Irby (via email)
Marianna Aue (via email)