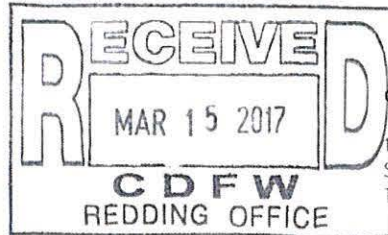


Churchwell White LLP



churchwellwhite.com

1414 K Street, 3rd Floor
Sacramento, CA 95814
T: 916.468.0950 | F: 916.468.0951

Kerry A. Fuller
T: 916.468.0620
Kerry@churchwellwhite.com

March 13, 2017

VIA Certified Mail

California Department of Fish and Wildlife
Northern Region – Inland (Region 1)
LSA Program
601 Locust Street
Redding, CA 96001

Re: Marble Mountain Ranch Diversion Lake or Streambed Alteration Notification

Dear Sir or Madam:

Please find enclosed a Lake or Streambed Alteration Notification for the diversion at Marble Mountain Ranch owned and operated by Douglas and Heidi Cole. Please contact Barbara Brenner at barbara@churchwellwhite.com or (916) 468-0625 or Kerry Fuller at kerry@churchwellwhite.com or (916) 468-0620 with any questions.

Regards,

Churchwell White LLP

A handwritten signature in blue ink, appearing to read "Kerry Fuller".

Kerry A. Fuller
KAF
Enclosure



FOR DEPARTMENT USE ONLY				
Date Received	Amount Received	Amount Due	Date Complete	Notification No
3-15-17	\$ 541.00	\$		1600-2017-0135-R1
Assigned to:		Janac Scruggs		

NOTIFICATION OF LAKE OR STREAMBED ALTERATION

Complete EACH field, unless otherwise indicated, following the enclosed instructions and submit ALL required enclosures. Attach additional pages, if necessary.

1. APPLICANT PROPOSING PROJECT

Name	Douglas T. Cole			
Business/Agency	Marble Mountain Ranch			
Mailing Address	92520 CA-96			
City, State, Zip	Somes Bar, CA, 95568			
Telephone	(530) 469-3322	Fax		
Email	guestranch@marblemountainranch.com			

2. CONTACT PERSON (Complete only if different from applicant)

Name	Barbara A. Brenner			
Street Address	1414 K Street, 3rd Floor			
City, State, Zip	Sacramento, CA 95814			
Telephone	(916) 468-0950	Fax	(916) 468-0951	
Email	barbara@churchwellwhite.com			

3. PROPERTY OWNER (Complete only if different from applicant)

Name				
Street Address				
City, State, Zip				
Telephone		Fax		
Email				

4. PROJECT NAME AND AGREEMENT TERM

A. Project Name		Marble Mountain Ranch Diversion		
B. Agreement Term Requested		<input checked="" type="checkbox"/> Regular (5 years or less) <input type="checkbox"/> Long-term (greater than 5 years)		
C. Project Term		D. Seasonal Work Period		E. Number of Work Days
Beginning (year)	Ending (year)	Start Date (month/day)	End Date (month/day)	
1999	2022			



5. AGREEMENT TYPE

Check the applicable box. If box B, C, D, E, or F is checked, complete the specified attachment.

A.	<input type="checkbox"/> Standard (Most construction projects, excluding the categories listed below)	
B.	<input type="checkbox"/> Gravel/Sand/Rock Extraction (Attachment A)	Mine I.D. Number: _____
C.	<input type="checkbox"/> Timber Harvesting (Attachment B)	THP Number: _____
D.	<input checked="" type="checkbox"/> Water Diversion/Extraction/Impoundment (Attachment C)	SWRCB Number: <u>S016375</u>
E.	<input checked="" type="checkbox"/> Routine Maintenance (Attachment D)	
F.	<input type="checkbox"/> Remediation of Marijuana Cultivation Sites (Attachment E)	
G.	<input type="checkbox"/> Department Grant Programs	Agreement Number: _____
H.	<input type="checkbox"/> Master	
I.	<input type="checkbox"/> Master Timber Operations	

6. FEES

See the current fee schedule to determine the appropriate notification fee. Itemize each project's estimated cost and corresponding fee. **Note: The Department may not process this notification until the correct fee has been received.**

	A. Project	B. Project Cost	C. Project Fee
1	Marble Mountain Ranch Diversion	<\$5,000	\$561.00
2			
3			
4			
5			
6			
7			
8			
9			
10			
		D. Base Fee (if applicable)	
		E. TOTAL FEE*	\$561.00

* Check, money order, and Visa or MasterCard payments are accepted. When payment is made by credit card, CDFW shall assess a separate credit card processing fee of 1.6% to the Total Fee. Credit card payment must be submitted with a completed Credit Card Payment Authorization Form (DFW 1443b (Rev. 8/15)) available online at: <https://www.wildlife.ca.gov/Conservation/LSA/Forms> or at a Department regional office.



7. PRIOR NOTIFICATION AND ORDERS

A. Has a notification previously been submitted to, or a Lake or Streambed Alteration Agreement previously been issued by, the Department for the project described in this notification?		
<input checked="" type="checkbox"/> Yes (Provide the information below) <input type="checkbox"/> No		
Applicant	Notification Number	Date
Douglas T. Cole	99-0040	April 28, 1999
B. Is this notification being submitted in response to a court or administrative order or notice, or a notice of violation (NOV) issued by the Department?		
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes (Enclose a copy of the order, notice, or NOV. If the applicant was directed to notify the Department verbally rather than in writing, identify the person who directed the applicant to submit this notification and the agency he or she represents, and describe the circumstances relating to the order.)		
<input type="checkbox"/> Continued on additional page(s)		

8. PROJECT LOCATION

A. Address or description of project location. <i>(Include a map that marks the location of the project with a reference to the nearest city or town, and provide driving directions from a major road or highway)</i>				
The project is located on Stanshaw Creek about 0.87 miles upstream of the confluence with the Klamath River and about 8 miles north of Somes Bar.				
<input type="checkbox"/> Continued on additional page(s)				
B. River, stream, or lake affected by the project.	Stanshaw Creek			
C. What water body is the river, stream, or lake tributary to?	Klamath River			
D. Is the river or stream segment affected by the project listed in the state or federal Wild and Scenic Rivers Acts?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Unknown	
E. County	Siskiyou			
F. USGS 7.5 Minute Quad Map Name	G. Township	H. Range	I. Section	J. ¼ Section
Bark Shanty Gulch, CA	13N	6E	33	NW
<input type="checkbox"/> Continued on additional page(s)				
K. Meridian (check one)	<input checked="" type="checkbox"/> Humboldt <input type="checkbox"/> Mt. Diablo <input type="checkbox"/> San Bernardino			
L. Assessor's Parcel Number(s)				
U.S. Forest Service Land				
<input type="checkbox"/> Continued on additional page(s)				



M. Coordinates (If available, provide at least latitude/longitude or UTM coordinates and check appropriate boxes)			
Latitude/Longitude	Latitude: 42.472346N		Longitude: 123.50418W
	<input checked="" type="checkbox"/> Degrees/Minutes/Seconds	<input checked="" type="checkbox"/> Decimal Degrees	<input type="checkbox"/> Decimal Minutes
UTM	Easting:	Northing:	<input type="checkbox"/> Zone 10 <input type="checkbox"/> Zone 11
Datum used for Latitude/Longitude or UTM		<input type="checkbox"/> NAD 27	<input checked="" type="checkbox"/> NAD 83 or WGS 84

9. PROJECT CATEGORY

WORK TYPE	NEW CONSTRUCTION	REPLACE EXISTING STRUCTURE	REPAIR-MAINTAIN-OPERATE EXISTING STRUCTURE
Bank stabilization – bioengineering/recontouring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bank stabilization – rip-rap/retaining wall/gabion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Boat dock/pier	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Boat ramp	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bridge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Channel clearing/vegetation management	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Culvert	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Debris basin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dam	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Filling of wetland, river, stream, or lake	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Geotechnical survey	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Habitat enhancement – revegetation/mitigation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Levee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Low water crossing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Road/trail	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sediment removal: pond, stream, or marina	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
flood control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Storm drain outfall structure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Temporary stream crossing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Utility crossing: horizontal directional drilling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
jack/bore	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
open trench	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Water diversion without facility	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Water diversion with facility	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



10. PROJECT DESCRIPTION

A. Describe the project in detail. Include photographs of the project location and immediate surrounding area.

- Written description of all project activities with detailed step-by-step description of project implementation.
- Include any structures (e.g., rip-rap, culverts) that will be placed or modified in or near the stream, river, or lake, and any channel clearing.
- Specify volume, and dimensions of all materials and features (e.g., rip rap fields) that will be used or installed.
- If water will be diverted or drafted, specify the purpose or use.
- Enclose diagrams, drawings, plans, and maps that provide all of the following: site specific construction details; dimensions of each structure and/or extent of each activity in the bed, channel, bank or floodplain; overview of the entire project area (i.e., "bird's-eye view") showing the location of each structure and/or activity, significant area features, stockpile areas, areas of temporary disturbance, and where the equipment/machinery will access the project area.

The project diverts water from Stanshaw Creek to Marble Mountain Ranch for irrigation, recreation, domestic, and small hydro-electric use. The activities that will occur near Stanshaw Creek in order to divert water include: (1) maintenance and repair of a hand stacked rock diversion to entrain flows into a diversion ditch and (2) maintenance of an existing culvert/flume crossing on an unnamed ephemeral stream that is tributary to Stanshaw Creek. The hand stacked diversion as well as the culvert/flume crossing are inspected and maintained on an ongoing basis to ensure that the diversion works are in proper working order. Maintenance and repair work does not introduce non-native materials into Stanshaw Creek and typically occurs following storm events that disrupt the existing diversion works. Photographs of the point of diversion during a high flow and a low flow period are attached as Exhibit A.

Continued on additional page(s)

B. Specify the equipment and machinery that will be used to complete the project.

Hand tools such as shovels, picks and wheel barrows.

Continued on additional page(s)

C. Will water be present during the proposed work period (specified in box 4.D) in the stream, river, or lake (specified in box 8.B). Yes No (Skip to box 11)

D. Will the proposed project require work in the wetted portion of the channel? Yes (Enclose a plan to divert water around work site) No



11. PROJECT IMPACTS

A. Describe impacts to the bed, channel, and bank of the river, stream, or lake, and the associated riparian habitat. Specify the dimensions of the modifications in length (linear feet) and area (square feet or acres) and the type and volume of material (cubic yards) that will be moved, displaced, or otherwise disturbed, if applicable.

There is no impact to the bed, banks, and channel of Stanshaw Creek. The rocks to be stacked to divert water to Marble Mountain Ranch are part of the existing stream that are realigned to form a diversion structure. The culvert/flume crossing are currently existing infrastructure that are maintained in compliance with Marble Mountain Ranch's water right.

Continued on additional page(s)

B. Will the project affect any vegetation? Yes (Complete the tables below) No (Include aerial photo with date supporting this determination)

Vegetation Type	Temporary Impact	Permanent Impact
	Linear feet: _____ Total area: _____	Linear feet: _____ Total area: _____
	Linear feet: _____ Total area: _____	Linear feet: _____ Total area: _____

Tree Species	Number of Trees to be Removed	Trunk Diameter (range)

Continued on additional page(s)

C. Are any special status animal or plant species, or habitat that could support such species, known to be present on or near the project site?

Yes (List each species and/or describe the habitat below) No Unknown

Continued on additional page(s)

D. Identify the source(s) of information that supports a "yes" or "no" answer above in Box 11.C.

Continued on additional page(s)

E. Has a biological study been completed for the project site?

Yes (Enclose the biological study) No

Note: A biological assessment or study may be required to evaluate potential project impacts on biological resources.



F. Has a hydrological study been completed for the project or project site?

Yes (Enclose the hydrological study) No

Note: A hydrological study or other information on site hydraulics (e.g., flows, channel characteristics, and/or flood recurrence intervals) may be required to evaluate potential project impacts on hydrology.

G. Have fish or wildlife resources or waters of the state been mapped or delineated on the project site?

Yes (Enclose the mapped results) No

Note: Check "yes" if fish and wildlife resources or waters of the state on the project site have been mapped or delineated. "Wildlife" means and includes all wild animals, birds, plants, fish, amphibians, reptiles and related ecological communities, including the habitat upon which the wildlife depends." (Fish & G. Code, § 89.5.) If "yes" is checked, submit the mapping or delineation. If the mapping or delineation is in digital format (e.g., GIS shape files or KMZ), you must submit the information in this format for the Department to deem your notification complete. If "no" is checked, or the resolution of the mapping or delineation is insufficient, the Department may request mapping or delineation (in digital or non-digital format), or higher resolution mapping or delineation for the Department to deem the notification complete.

12. MEASURES TO PROTECT FISH, WILDLIFE, AND PLANT RESOURCES

A. Describe the techniques that will be used to prevent sediment from entering watercourses during and after construction.

Sediment does not enter the watercourse during or after the hand stacking of rocks that are already present in the streambed. The maintenance and repair work is based on the materials that are available in Stanshaw Creek; it does not add to the existing sediment in Stanshaw Creek while the work is being done.

Continued on additional page(s)

B. Describe project avoidance and/or minimization measures to protect fish, wildlife, and plant resources.

While the rocks that form the diversion structure are stacked and related maintenance activity is undertaken, water from Stanshaw Creek may still pass to serve fish, wildlife, and plant resources below Marble Mountain Ranch's point of diversion.

Continued on additional page(s)

C. Describe any project mitigation and/or compensation measures to protect fish, wildlife, and plant resources.

Maintenance efforts typically coincide with the end of storm events to ensure that any impacts to fish, wildlife, and plant resources are avoided.

Continued on additional page(s)



13. PERMITS

List any local, State, and federal permits required for the project and check the corresponding box(es). Enclose a copy of each permit that has been issued.

A. United States Forest Service Applied Issued

B. _____ Applied Issued

C. _____ Applied Issued

D. Unknown whether local, State, or federal permit is needed for the project. (Check each box that applies)

Continued on additional page(s)

14. ENVIRONMENTAL REVIEW

A. Has a draft or final document been prepared for the project pursuant to the California Environmental Quality Act (CEQA) and/or National Environmental Protection Act (NEPA)?

Yes (Check the box for each CEQA or NEPA document that has been prepared and enclose a copy of each.)

No (Check the box for each CEQA or NEPA document listed below that will be or is being prepared.)

<input checked="" type="checkbox"/> Notice of Exemption	<input type="checkbox"/> Mitigated Negative Declaration	<input type="checkbox"/> NEPA document (type): _____
<input type="checkbox"/> Initial Study	<input type="checkbox"/> Environmental Impact Report	
<input type="checkbox"/> Negative Declaration	<input type="checkbox"/> Notice of Determination (Enclose)	
<input type="checkbox"/> THP/ NTMP	<input type="checkbox"/> Mitigation, Monitoring, Reporting Plan	

B. State Clearinghouse Number (if applicable) _____

C. Has a CEQA lead agency been determined? Yes (Complete boxes D, E, and F) No (Skip to box 14.G)

D. CEQA Lead Agency _____

E. Contact Person _____ F. Telephone Number _____

G. If the project described in this notification is not the "whole project" or action pursuant to CEQA, briefly describe the entire project (Cal. Code Regs., tit. 14, § 15378).

Continued on additional page(s)

H. Has a CEQA filing fee been paid pursuant to Fish and Game Code section 711.4?

Yes (Enclose proof of payment) No (Briefly explain below the reason a CEQA filing fee has not been paid)

Note: If a CEQA filing fee is required, the Lake or Streambed Alteration Agreement may not be finalized until paid.



State of California - Department of Fish and Wildlife
NOTIFICATION OF LAKE OR STREAMBED ALTERATION
FISH AND GAME CODE SECTION 1602
DFW 2023 (REV. 10/01/16) Page 9

15. SITE INSPECTION

Check one box only.

In the event the Department determines that a site inspection is necessary, I hereby authorize a Department representative to enter the property where the project described in this notification will take place at any reasonable time, and hereby certify that I am authorized to grant the Department such entry.

I request the Department to first contact (*insert name*) Barbara A. Brenner
at (*insert telephone number*) (916) 488-0950 to schedule a date and time to enter the property where the project described in this notification will take place. I understand that this may delay the Department's determination as to whether a Lake or Streambed Alteration Agreement is required and/or the Department's issuance of a draft agreement pursuant to this notification.

16. DIGITAL FORMAT

Is any of the information included as part of the notification available in digital format (i.e., CD, DVD, etc.)?

Yes (Please enclose the information via digital media with the completed notification form)

No

17. SIGNATURE

I hereby certify that to the best of my knowledge the information in this notification is true and correct and that I am authorized to sign this notification as, or on behalf of, the applicant. I understand that if any information in this notification is found to be untrue or incorrect, the Department may suspend processing this notification or suspend or revoke any draft or final Lake or Streambed Alteration Agreement issued pursuant to this notification. I understand also that if any information in this notification is found to be untrue or incorrect and the project described in this notification has already begun, I and/or the applicant may be subject to civil or criminal prosecution. I understand that this notification applies only to the project(s) described herein and that I and/or the applicant may be subject to civil or criminal prosecution for undertaking any project not described herein unless the Department has been separately notified of that project in accordance with Fish and Game Code section 1602 or 1611.

Douglas T. Cole

Signature of Applicant or Applicant's Authorized Representative

3/04/2017

Date

Douglas T. Cole

Print Name



Applicant Name: Douglas T. Cole

Project Name: Marble Mountain Ranch Diversio

ATTACHMENT C

Water Diversion/Extraction/Impoundment

Complete this attachment *if* the project is directly related to any diversion, obstruction, extraction, or impoundment of the natural flow of a river, stream, or lake. Provide the number assigned to the State Water Resources Control Board (SWRCB) application, permit, license, registration, statement of diversion, and use, or other authorization to divert, extract, or impound water, if applicable. If you have a current or expired Lake or Streambed Alteration Agreement (Agreement) for some activity related to your project, provide the Agreement number in your project description below and attach this form, with the information requested on one or more separate pages, to the notification form (DFW 2023).

I. Diversion or Obstruction

- A. Attach plans of any diversion or water storage structure or facility that will be constructed or if no structures or facilities will be constructed, photographs of the project site, including any existing facilities or structures.
- B. Please complete the water use table below. For diversion rate, use gallons per day (gpd) if rate is less than 0.025 cubic foot per second (cfs) (approximately 16,000 gpd).

SEASON OF DIVERSION		PURPOSE OF USE	DIVERSION RATE (cfs or gpm)	AMOUNT USED (acre feet)	
BEGINNING DATE (Mo. & Day)	ENDING DATE (Mo. & Day)			FROM STORAGE	BY DIVERSION
Jan. 1	Dec. 31	domestic, hydro-electric	3 cfs		

- C. Attach a topographic map that is labeled to show the following:
 1. Source of the water
 2. Points of diversion
 3. Areas of use
 4. Storage areas
- D. Specify the maximum instantaneous rate of withdrawal (using proposed equipment) in cubic feet per second (cfs) or gallons per minute (gpm).

The maximum instantaneous rate of withdrawal via the Marble Mountain Ranch diversion is 3 cfs.



E. Check each box below that applies to the project water rights and attach supporting documents.

- Riparian. *Attach the most recent Statement of Water Diversion and Use filed with the SWRCB.*
 - Diversion for immediate use.
 - Diversion to storage (for less than 30 days).
- Appropriative.
 - Pre-1914. *Attach the most recent Statement of Water Diversion and Use filed with SWRCB.*
 - Post-1914. *Attach a copy of the applicant's water right application, permit, or license filed with or issued by SWRCB.*
 - Small domestic, livestock stockpond, or small irrigation use registration. *Attach a copy of the applicant's registration of water use form filed with, or registration certificate issued by, SWRCB (See Water Code section 1228 et seq.).*
 - Diversion for immediate use.
 - Diversion to storage.
- Purchased or contracted water. *Attach a copy of the applicant's contract or letter from the applicant's water provider.*
- Other. *Describe below or attach separate page.*

F. Approximate lowest level of flow in the river, stream, or lake at the point of diversion during the proposed season of diversion in gpm or cfs:

The lowest level of flow in Stanshaw Creek, from which the Coles divert water nears 3 cfs of water. However, during the low flow periods, the Coles reduce the amount of water they divert to comply with a recommended bypass flow from the National Marines Fisheries Service.

G. *Other information.* After the Department reviews the project description, and based on the project's location and potential impacts to fish and wildlife resources, the Department will determine if additional information is needed before accepting the notification as complete. Such information could include more site-specific information to ensure that the terms and conditions in the Agreement issued to the applicant will be adequate to protect the fish and wildlife resources the diversion or obstruction could adversely affect. Site-specific information could include biological or hydrological studies or surveys based on the season of diversion, the location of the diversion relative to other diversions in the watershed, the method of diversion, and the quantity of water to be diverted, such as the following:



1. *Water Availability Analysis* to determine if the water can be diverted without causing substantial adverse effects on downstream fish and wildlife resources. Water availability analyses are based on a comparison of flows without any diversions (unimpaired flows) and flows available when all known diversions are “subtracted” (impaired flows).
2. *Instream Flow Study* to determine the minimum bypass flows needed and maximum rates of withdrawal possible to provide adequate depths and velocities to protect habitat for all life stages of aquatic resources. The study plan must be prepared by a qualified fisheries biologist and approved by the Department, will determine the effects of the proposed diversion on flow depth and velocity.
3. *Water Quality Study* to assess the effects of the proposed water diversion or impoundment on water temperature and water quality at and downstream from the point(s) of diversion.

II. Permanent or Temporary Reservoir

Please provide the information below *if* the project includes the construction of a reservoir, whether permanent or temporary, and/or the filling of an existing reservoir by diverting or obstructing the flow of a river, stream, or lake.

A. Proposed use of the stored water:

B. Construction plans for the reservoir and dam. (*Attach plans*)

C. A complete description of the reservoir and dam, including the methods and materials that will be used to construct the reservoir and dam and the following dimensions certified by a licensed professional: the width, length, depth, and total surface area of the reservoir pool; the volume of water in acre-feet that will be stored in the reservoir; and the height and length of the dam.

D. The amount of riparian land that will be inundated (i.e., upstream from the dam): _____

E. Where vehicles will enter and exit the project site during construction and for maintenance purposes after construction. (*Attach map*)

F. The maximum distance of the disturbance that will occur upstream and downstream during construction:

G. The methods employed to ensure that the flow is maintained below the dam at all times when water is being diverted into the reservoir:



H. Specify the time period when the area below the dam becomes dry, if at all.

I. The methods employed to ensure that adult and juvenile fish will be able to pass over or around the dam:

J. If a fish ladder is necessary to enable adult and juvenile fish to pass over or around the dam, provide construction plans and an operation plan for the fish ladder. *(Enclose, if applicable)*

K. The methods employed to monitor and maintain water quality (including temperature) within the reservoir:

III. Temporary Reservoir

Please provide the information below *if* the project includes the construction of a temporary reservoir only within the stream zone.

A. Date of dam installation: _____

B. Date of dam removal: _____

C. Amount of time it will take to construct the dam: _____

D. Amount of time it will take to remove the dam: _____

E. Methods to ensure that the reservoir pool will be drained in a manner that does not strand or otherwise harm fish:

[SUMMARY OF FINAL SUBMITTED VERSION]

SUPPLEMENTAL STATEMENT OF WATER DIVERSION AND USE FOR 2013

Primary Owner: Marble Mountain Ranch
Statement Number: S016375
Date Submitted: 08/08/2014

1. Water is used under	Pre-1914 Claim
2. Year of first use	1860

3-4. Maximum Rate of Diversion for each Month and Amount of Water Diverted and Used			
Month	Rate of diversion (CFS)	Amount directly diverted or collected to storage (Gallons)	Amount beneficially used (Gallons)
January	3	58200000	10000000
February	3	58200000	10000000
March	3	58200000	10000000
April	3	58200000	10000000
May	3	58200000	20000000
June	3	58200000	20000000
July	2	48500000	20000000
August	2	48500000	20000000
September	3	43600000	20000000
October	3	58200000	10000000
November	3	58200000	10000000
December	3	58200000	10000000
Total		664400000	170000000
Comments			

5. Water Diversion Measurement	
a. Measurement	Water directly diverted and/or diverted to storage was measured
b. Types of measuring devices used	Other: Swoffer digital flow meter
c. Additional technology used	Flow Totalizer
c. Description of additional technology used	As well as Swoffer digital flow meter
d. Who installed your measuring device(s)	Representative who is American Water Works Association (AWWA)-certified
e. Make, model number, and last calibration date of your measuring device(s)	Swoffer 2100, last calibrated 5/29/2013
f. Why direct measurement using a device listed in Section 1 is "not locally cost effective"	
f. Explanation of why use of devices and technologies listed in Section 1 are "not locally cost effective"	
g. Method(s) used as an alternative to direct measurement	
g. Explanation of method(s) used as an alternative to direct measurement	

6. Purpose of Use	
Domestic	12-50 persons seasonally, 2 acres lawn and garden
Irrigation	10 Acres
Stockwatering	20-24 horses, 4 goats, 6 dogs, ?cats, 24 chickens, 4 rabbits

Other | pond, pool, and hot tub

7. Changes in Method of Diversion

No significant changes other than routine canal maintenance and ongoing improvement to carry capacity to reduce canal line loss.

8. Conservation of Water

Are you now employing water conservation efforts?	Yes
a. Describe any water conservation efforts you have initiated	Our conservation efforts are focused on targeting loss of carried water. We have done rehabilitation of the canal berm, installed culvert linings in sections, and have also improved irrigation efficiency by continuing to transition to sprinkler irrigation instead of the historical direct flooding method. We have also installed more efficient appliances and light fixtures in all the cabins to reduce electrical consumption. Canal areas with signs of seepage are gradually being lined with half culverts. The primary beneficial use of the diverted water is power production (non-consumptive), followed by domestic and agricultural consumption of diverted water. During the drier months of July and August, we voluntarily reduced our diversion rate due to the drought, without waiving any water rights.
Amount of water conserved	Acre-Feet
b. I have data to support the above surface water use reductions due to conservation efforts.	

9. Water Quality and Wastewater Reclamation

a. Are you now or have you been using reclaimed water from a wastewater treatment facility, desalination facility, or water polluted by waste to a degree which unreasonably affects such water for other beneficial causes?	No
Amount of reduced diversion	
Type of substitute water supply	
b. Amount of substitute water supply used	
I have data to support the above surface water use reductions due to the use of a substitute water supply	

10. Conjunctive Use of Surface Water and Groundwater

a. Are you now using groundwater in lieu of surface water?	No
b. Amount of groundwater used	
I have data to support the above surface water use reductions due to the use of groundwater.	

11a. Additional Remarks

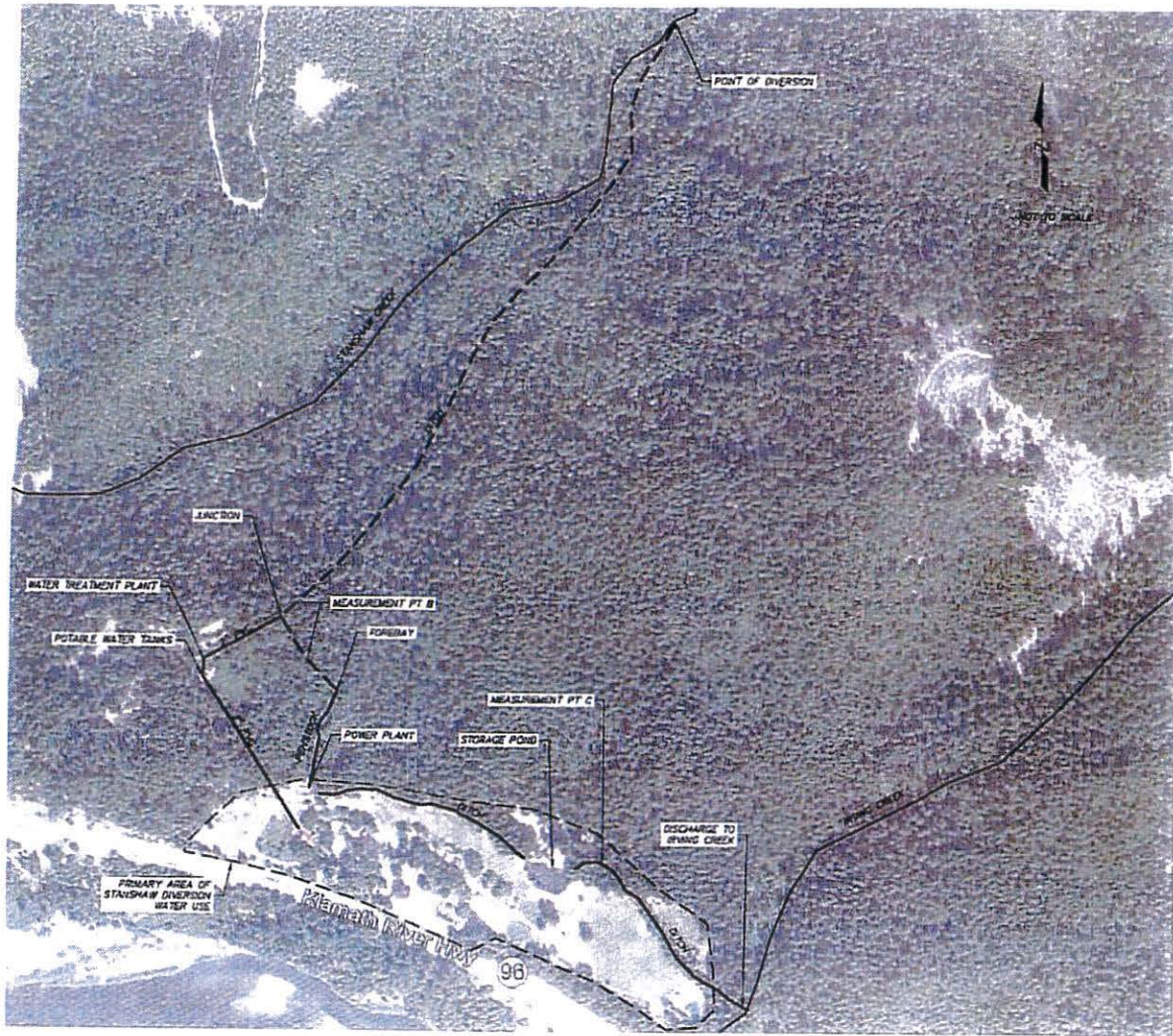
Attachments

File Name	Description	Size
No Attachments		

Contact Information of the Person Submitting the Form

First Name	Douglas
Last Name	Cole
Relation to Water Right	Diverter of Record
The information in the report is true to the best of his/her knowledge and belief	Yes

Marble Mountain Ranch Map of Diversion



Point of Diversion Color Photographs

1. Point of Diversion during higher flows February 2015



2. Point of Diversion during lower flows September 2016





Applicant Name: Douglas T. Cole

Project Name: Marble Mountain Ranch Diversion

ATTACHMENT D

Routine Maintenance

Complete this attachment only when notifying for routine maintenance activities that will be recurring over the term of the agreement, such as maintaining a number of existing private or public facilities, including but not limited to canals, channels, culverts, and ditches. Submit this form with the completed notification form (DFW 2023).

I. REGULARLY RE-OCCURRING MAINTENANCE ACTIVITIES (Check all that apply)

Sediment removal (concrete-lined lake or stream or earthen lake or stream):

- In and around bridges, culverts, storm drain outlets, and/or water diversion structure
- Stream channel bed
- Stream channel bank(s)
- Pond or lake
- Marina basin
- Detention basin
- Boat launch channel
- Other: _____

Method (heavy equipment, suction dredge, etc.) – specify: hand tools such as shovels, picks, and wheelbarrows

Estimated total cumulative sediment volume removed annually: _____

Estimated total cumulative area impacted by sediment removal annually: _____

Estimated recurrence frequency for sediment removal: _____

Vegetation management:

- Limbing and/or trimming of branches and tree limbs
- Removal under high power lines
- Removing fallen trees
- Removing dead (not dormant) trees and shrubs
 - Stump left intact
 - Stump removal – specify: _____



Removing vegetation (e.g., bulrush and cattails) from stream channel bed with:

- Non-motorized hand tools
- Mechanical vegetation cutters, shredders, string trimmers (a.k.a. weed-whacker, weed-whip), chainsaws
- Mowing
- Heavy equipment (soil disturbance)
- Herbicide – specify chemicals and attach application plan: _____
- Other: _____

Removing vegetation from bank with:

- Non-motorized hand tools
- Mechanical vegetation cutters, shredders, string trimmers (a.k.a. weed-whacker, weed-whip), chainsaws
- Mowing
- Heavy equipment (soil disturbance)
- Herbicide – specify chemicals and attach application plan: _____
- Other: _____

Removing only non-native vegetation with:

- Non-motorized hand tools
- Mechanical vegetation cutters, shredders, string trimmers (a.k.a. weed-whacker, weed-whip), chainsaws
- Mowing
- Heavy equipment (soil disturbance)
- Herbicide – specify chemicals and attach application plan: _____
- Other: _____

Vegetation and brush pile burning – specify burn location: _____

Other vegetation management: _____

Estimated total linear feet of vegetation removed annually: _____

Estimated total cumulative area impacted by vegetation management annually: _____

Estimated recurrence frequency for vegetation management: _____

Intentionally Left Blank



Existing facilities:

Erosion within existing facilities and easements

New erosion repair

Repair at existing erosion control sites

Other: _____

Road maintenance (e.g. repair or re-grade) of existing rights of way

Minor bridge work – work from bank or work in-channel (describe on a separate page if the work requires dewatering):

Reinforcing pilings

Reinforcing aprons

Painting (access and falsework)

Paint removal – specify method: _____

Other: _____

Specify materials and equipment: _____

Minor culvert repair:

Repairing wingwalls within existing footprint

Repairing scour protection within existing footprint – provide detail:

Other: Repairs of a culvert/flume crossing within its existing footprint

Maintenance of stormwater outfalls and drop-inlet culverts

Erosion repair

Flow dissipaters

Servicing of water quality monitoring stations, stream gages, etc.

Boat launch repair

Graffiti removal and abatement from bridges, culverts, and other instream structures

Removal of trash and debris from:

Within channels

Head gates, screens, racks, pilings and piers

Other: _____



Location where trash and debris will be placed or discarded: Leaves that are removed are placed along side the culvert/flume

Pesticide application:

Rodenticides – specify chemicals and attach application plan: _____

Insecticides – specify chemicals and attach application plan: _____

Name of Licensed Agricultural Pest Control Advisor: _____

Estimated recurrence frequency for pesticide application: _____

Other type of routine maintenance activity (provide details below):

II. MAP OR MAPBOOK

Attach a map of sufficient detail to assist in locating maintenance sites, minimally including the following:

- A. The applicant's jurisdictional boundaries within the project area.
- B. All watercourses within the jurisdictional boundaries where maintenance will occur.
- C. A key to identify each watercourse (e.g. earthen or concrete lined) and the maintenance activities (e.g. vegetation removal, sediment removal, etc.) and location (e.g., bridges, water control diversions, and large scale maintenance) of those activities that are likely to occur.

III. SPECIAL STATUS SPECIES LOCATIONS

A drawing, diagram, and/or map that shows the applicant's jurisdictional boundaries and the locations within that area where special status species are known to exist.

**Marble Mountain Ranch
Notification of Lake or Streambed Alteration
Fish and Game Code Section 1602**

Question 10D. Will the proposed project require work in the wetted portion of the channel?

Maintenance and operation of the diversion will require work in the wetted portion of the channel, but the work does not introduce foreign material into Stanshaw Creek. The rocks used to create the structure to entrain flow into Marble Mountain Ranch's diversion are already present in Stanshaw Creek and are stacked within the creek to direct water into the diversion. Therefore, diverting water around the work is not required as no foreign material is used in the rock stacking process or in maintenance of the existing culvert/flume.

Use Code: 153
Authorization ID: HAP419
Contact Name: Marble Mountain
Expiration Date: 12/31/2019

FS-2700-4i (02/2009)
OMB No. 0596-0082

**SPECIAL USE PERMIT FOR
OUTFITTING AND GUIDING**

**Authority: Federal Lands Recreation Enhancement Act, 16 U.S.C. 6802(h)
(Ref. FSH 2709.11, section 41.53)**

This permit authorizes priority use outfitting and guiding for number up to 10 years.

Marble Mountain Guest Ranch of 92520 Highway 96, Somes Bar, CA 95568 (hereinafter "the holder"), is hereby authorized to use and occupy National Forest System lands, subject to the terms and conditions of this permit, to provide outfitting and guiding services within the Happy Camp/ Oak Knoll & Scott River / Salmon River Ranger Districts of the Klamath National Forest, described as and as shown on the map of the authorized area, attached as Appendix A. The above-described area shall be referred to as the "permit area."

The purpose of this permit is to authorize the following outfitting and guiding activities:

Providing outfitting and guiding services for recreational whitewater boating activities on the Klamath, Scott and Salmon Rivers and sport fishing activities on the Klamath River.

and assign use as follows:

364 priority use service days.

This use will be exercised as described in the five-year or annual operating plan.

The following appendices are attached to and made a part of this permit:

- APPENDIX A - Map of Authorized Area
- APPENDIX B - Five-year or annual Operating Plan, dated 05/01/2010 and approved annually
- APPENDIX C - Trip Itinerary - Trip Card
- APPENDIX D - Estimated Fee Determination Sheet, approved annually - Not Applicable
- APPENDIX E - Actual Use Report Format
- APPENDIX F - Authorized Officer's Outfitter and Guide Performance Evaluation Criteria
- APPENDIX G - Other - Not Applicable

I. AUTHORITY AND GENERAL TERMS OF THE PERMIT

A. AUTHORITY. This permit is issued pursuant to Federal Lands Recreation Enhancement Act, 16 U.S.C. 6802(h), and 36 CFR Part 251, Subpart B, as amended, and is subject to their provisions.

B. AUTHORIZED OFFICER. The authorized officer is the Forest Supervisor or a subordinate officer with delegated authority.

C. TERM. This permit shall expire at midnight on 12/31/2019. Expiration of this permit shall not require notice, a decision document, or any environmental analysis or other documentation.

D. RENEWAL. This permit may be renewed upon expiration, provided the use is consistent with the applicable forest land and resource management plan, applicable laws and regulations, and the terms of this permit, and the holder has performed satisfactorily under this permit, as demonstrated by acceptable annual performance reviews. If the holder wants this permit to be renewed, the holder must notify the authorized officer in writing at least six months before this permit expires. The decision whether to issue a new permit to the holder is at the sole discretion of the Forest Service. The authorized officer may prescribe new terms and conditions when a new permit is issued.

E. AMENDMENT. This permit may be amended in whole or in part by the Forest Service when, at the discretion of the authorized officer, such action is deemed necessary or desirable to incorporate new terms that may be required by law, regulation, directive, the applicable forest land and resource management plan, or projects and activities implementing a land management plan pursuant to 36 CFR 215.

F. COMPLIANCE WITH LAWS, REGULATIONS, AND OTHER LEGAL REQUIREMENTS. In exercising the rights and privileges granted by this permit, the holder shall comply with all present and future federal laws and regulations and all present and future state, county, and municipal laws, regulations, and other legal requirements that apply to the permit area, to the extent they do not conflict with federal law, regulation, or policy. The Forest Service assumes no responsibility for enforcing laws, regulations, and other legal requirements that fall under the jurisdiction of other governmental entities.

G. NON-EXCLUSIVE USE. The use and occupancy authorized by this permit are not exclusive. The Forest Service reserves the right of access to the permit area, including a continuing right of physical entry to the permit area for inspection, monitoring, or any other purpose consistent with any right or obligation of the United States under any law or regulation. The Forest Service reserves the right to allow others to use the permit area in any way that is not inconsistent with the holder's rights and privileges under this permit, after consultation with all parties involved. Except for any restrictions that the holder and the authorized officer agree are necessary to protect the installation and operation of authorized temporary improvements, the lands and waters covered by this permit shall remain open to the public for all lawful purposes.

H. CHANGE IN CONTROL

1. **Notification.** The holder shall notify the authorized officer when a change in control of the business entity that holds this permit is contemplated. If the holder is a corporation, change in control means the sale or transfer of a controlling interest in the corporation. If the holder is a partnership or a limited liability company, change in control means the sale or transfer of a controlling interest in the partnership or limited liability company. If the holder is an individual, change in control means the sale or transfer of the business to another party.

2. **Termination.** This permit is not transferable. Any change in control of the business entity as defined in clause I.H.1 shall cause this permit to terminate upon issuance of a new permit to another party for the use and occupancy authorized by this permit. The party who acquires control of the business entity must submit an application for a permit for the type of use and occupancy authorized by this permit. Issuance of a new permit to the party acquiring control shall be at the sole discretion of the authorized officer. The authorized officer shall determine that the applicant meets requirements under federal regulations.

L. LIMITATIONS. Nothing in this permit gives or implies permission to build or maintain any structure or facility or to conduct any activity, unless specifically provided for in this permit. Any use not specifically identified in this permit must be proposed in accordance with 36 CFR 251.54. Approval of

such a proposal through issuance of a new permit or permit amendment is at the sole discretion of the authorized officer.

II. OPERATIONS

A. FIVE-YEAR OPERATING PLAN. The 5-year operating plan, which shall be attached to this permit as Appendix B, shall be submitted by the holder and approved by the authorized officer before the holder conducts any services authorized by this permit. The holder shall prepare, annually review, and revise as needed the 5-year operating plan by date before start of operating season, in consultation with the authorized officer. At a minimum, the five-year operating plan shall include (1) the season of use for authorized outfitting and guiding activities, including the start and stop date of operations; (2) limitations on use established by the Forest Service (including fire restrictions); (3) the fee calculation option to be used and a completed Estimated Fee Determination Sheet (appendix D); and (4) any of the following that are applicable: (a) a process for submitting trip itineraries (appendix C); (b) guidelines and limits for incidental grazing; (c) location and layout of assigned sites to be used for base, spike, and drop camps or other purposes; and (d) authorized temporary improvements on National Forest System lands, including a schedule for their construction and removal.

B. ITINERARY. The holder shall submit an itinerary for each type of trip.

C. PERFORMANCE REVIEW AND EVALUATION. The holder's compliance with the terms and conditions of this permit and the five-year or annual operating plan is subject to annual performance review and evaluation by the authorized officer. The holder's performance will be documented using the Outfitter and Guide Performance Evaluation Criteria, Appendix F.

D. TEMPORARY IMPROVEMENTS. No permanent improvements may be constructed under this permit. Temporary improvements with negligible value, such as hitching posts, corrals, tent frames, and shelters, may be approved by the authorized officer in the five-year or annual operating plan. Plans and revisions to plans for design, development, and layout of temporary improvements must have prior written approval from the authorized officer.

E. PROHIBITION ON ASSIGNMENT OF USE. The holder may not assign all or part of the authorized use to others.

F. PERFORMANCE OF SUPPORT SERVICES. As a general rule, the holder shall conduct the day-to-day activities authorized by this permit. Activities that support the use authorized by this permit, such as food or shuttle services, may be conducted by a party other than the holder, but only with prior written approval from the authorized officer. The holder shall continue to be responsible for compliance with all the terms of this permit.

G. MAINTENANCE. The holder shall maintain authorized temporary improvements and the permit area to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer and consistent with other provisions of this authorization. The holder shall comply with inspection requirements deemed appropriate by the authorized officer.

H. SIGNS. Signs posted on National Forest System lands must have prior written approval of the authorized officer.

I. NONDISCRIMINATION

1. The holder and its employees shall not discriminate against any person on the basis of race, color, sex

(in educational activities), national origin, age, or disability or by curtailing or refusing to furnish accommodations, facilities, services, or use privileges offered to the public generally. In addition, the holder and its employees shall comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended, Section 504 of the Rehabilitation Act of 1973, as amended, Title IX of the Education Amendments Act of 1972, as amended, and the Age Discrimination Act of 1975, as amended.

2. The holder shall include and require compliance with the above nondiscrimination provisions in any third-party agreement made with respect to the operations authorized under this permit.

3. The Forest Service shall furnish signs setting forth this policy of nondiscrimination. These signs shall be conspicuously displayed at the public entrance to the premises and at other exterior or interior locations, as directed by the Forest Service.

4. The Forest Service shall have the right to enforce the foregoing nondiscrimination provisions by suit for specific performance or by any other available remedy under the laws of the United States or the State in which the violation occurs.

J. EQUAL ACCESS TO FEDERAL PROGRAMS. In addition to the above nondiscrimination policy, the holder agrees to ensure that its programs and activities are open to the general public on an equal basis and without regard to any non-merit factor.

K. SANITATION. The operation and maintenance of all sanitation and food service systems and facilities shall comply with applicable standards set by state and local health departments.

L. REFUSE DISPOSAL. The holder shall comply with all applicable federal, state, and local requirements related to disposal of any refuse resulting from the use and occupancy authorized by this permit.

M. REMOVAL AND PLANTING OF VEGETATION. This permit does not authorize the cutting of timber or other vegetation. Trees or shrubbery may be removed or destroyed only after the authorized officer has approved and marked what may be removed or destroyed. Timber cut or destroyed shall be paid for at current stumpage rates for similar timber in the Klamath National Forest. The Forest Service reserves the right to dispose of the merchantable timber to those other than the holder at no stumpage cost to the holder. Unmerchantable material shall be disposed of as directed by the authorized officer. Planting of trees, shrubs, and other plants in the permit area must have prior written approval from the authorized officer.

N. FAILURE TO EXERCISE AUTHORIZED PRIVILEGES. During the 5th year of operation and upon termination, the authorized officer shall review actual use and adjust the allocation of use to match the highest amount of actual use in 1 calendar year during the first 5 years of operation, plus 25 percent of that amount for holders with up to 1,000 service days or the equivalent in quotas or 15 percent of that amount for holders with more than 1,000 service days or the equivalent in quotas, provided that:

1. The combination of the highest amount of actual use in 1 calendar year and the additional 25 or 15 percent of use not exceed the amount of use allocated when the permit was issued; and

2. To ensure that 5 years of use are available for review as a basis for making the allocation adjustment, the authorized officer may adjust the review period to include a previous or an additional year of use based on a finding that extraordinary circumstances prevented a season of operation.

O. RESTRICTION OF MOTOR VEHICLE USE. The holder shall restrict motor vehicle use to designated roads, trails, and areas, unless specifically provided otherwise in the operating plan.

P. NOXIOUS WEED/EXOTIC PLANT PREVENTION AND CONTROL. The holder shall be responsible for the prevention and control of noxious weeds and/or exotic plants arising from the authorized use. For purposes of this clause, noxious weeds and exotic plants include those species recognized as such by federal, state, or local authority. The holder shall follow prevention and control measures required by federal, state, or local authority. When determined to be necessary by the authorized officer, the holder shall develop a plan for noxious weed and exotic plant prevention and control. These plans must have prior written approval from the authorized officer and, upon approval, shall be attached to this permit as an appendix.

Q. WEED-FREE HAY. The holder shall use only hay, grain, straw, pelletized feed, or mulch certified as noxious weed-free or noxious weed seed-free by a State Department of Agriculture or other authorized county official. The holder shall provide documentation of that certification to the authorized officer.

III. RIGHTS AND LIABILITIES

A. LEGAL EFFECT OF THE PERMIT. This permit, which is revocable and terminable, is not a contract or a lease, but rather a federal license. The benefits and requirements conferred by this authorization are reviewable solely under the procedures set forth in 36 CFR Part 251, Subpart C, and 5 U.S.C. 704. This permit does not constitute a contract for purposes of the Contract Disputes Act, 41 U.S.C. 601. The permit is not real property, does not convey any interest in real property, and may not be used as collateral for a loan.

B. THIRD-PARTY RIGHTS. This permit is subject to all valid outstanding rights. Valid outstanding rights include those derived under mining and mineral leasing laws of the United States. The United States is not liable to the holder for the exercise of any such right.

C. ABSENCE OF THIRD-PARTY BENEFICIARY RIGHTS. The parties to this permit do not intend to confer any rights on any third party as a beneficiary under this permit.

D. WATER RIGHTS. This permit does not confer any water rights on the holder. Water rights are not required by state law and may not be acquired to exercise the minor water uses authorized by this permit.

E. RISKS. The holder assumes all risk of loss associated with use and occupancy of the permit area, including but not limited to theft, vandalism, fire and any fire-fighting activities (including prescribed burns), avalanches, rising waters, winds, falling limbs or trees, and acts of God. If authorized temporary improvements in the permit area are destroyed or substantially damaged, the authorized officer shall conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed.

F. DAMAGE TO UNITED STATES PROPERTY. The holder has an affirmative duty to protect from damage the land, property, and other interests of the United States. Damage includes but is not limited to fire suppression costs, damage to government-owned improvements covered by this permit, and all costs and damages associated with or resulting from the release or threatened release of a hazardous material occurring during or as a result of activities of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees on, or related to, the lands, property, and other interests covered by this permit. For purposes of clauses III.F, III.I, and V, "hazardous material" shall mean (a) any hazardous substance

under section 101(14) of CERCLA, 42 U.S.C. 9601(14); (b) any pollutant or contaminant under section 101(33) of CERCLA, 42 U.S.C. 9601(33); (c) any petroleum product or its derivative, including fuel oil, and waste oils; and (d) any hazardous substance, extremely hazardous substance, toxic substance, hazardous waste, ignitable, reactive or corrosive materials, pollutant, contaminant, element, compound, mixture solution or substance that may pose a present or potential hazard to human health or the environment under any applicable environmental laws.

1. The holder shall avoid damaging or contaminating the environment, including but not limited to the soil, vegetation (such as trees, shrubs, and grass), surface water, and groundwater, during the holder's use and occupancy of the permit area. If the environment or any government property covered by this permit becomes damaged during the holder's use and occupancy of the permit area, the holder shall immediately repair the damage or replace the damaged items to the satisfaction of the authorized officer and at no expense to the United States.

2. The holder shall be liable for all injury, loss, or damage, including fire suppression, or other costs in connection with rehabilitation or restoration of natural resources associated with the use and occupancy authorized by this permit. Compensation shall include but not be limited to the value of resources damaged or destroyed, the costs of restoration, cleanup, or other mitigation, fire suppression or other types of abatement costs, and all administrative, legal (including attorney's fees), and other costs in connection therewith.

3. With respect to roads, the holder shall be liable for damage to all roads and trails of the United States open to public use caused by use of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees to the same extent as provided under clause III.F.1, except that liability shall not include reasonable and ordinary wear and tear.

G. HEALTH, SAFETY, AND ENVIRONMENTAL PROTECTION. The holder shall promptly abate as completely as possible and in compliance with all applicable laws and regulations any activity or condition and arising out of or relating to the authorized use and occupancy that causes or threatens to cause a hazard to public health or the safety of the holder's employees or agents or harm to the environment (including areas of vegetation or timber, fish or other wildlife populations, their habitats, or any other natural resources). The holder shall immediately notify the authorized officer of all serious accidents that occur in connection with such activities. The responsibility to protect the health and safety of all persons affected by the use and occupancy authorized by this permit is solely that of the holder. The Forest Service has no duty under the terms of this permit to inspect the permit area or operations and activities of the holder for hazardous conditions or compliance with health and safety standards.

H. INDEMNIFICATION OF THE UNITED STATES. The holder shall indemnify, defend, and hold harmless the United States for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the holder in connection with the use and occupancy authorized by this permit. This indemnification and hold harmless provision includes but is not limited to acts and omissions of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees in connection with the use and occupancy authorized by this permit which result in (1) violations of any laws and regulations which are now or which may in the future become applicable, and including but not limited to those environmental laws listed in clause V.A of this permit; (2) judgments, claims, demands, penalties, or fees assessed against the United States; (3) costs, expenses, and damages incurred by the United States; or (4) the release or threatened release of any solid waste, hazardous waste, hazardous substance, pollutant, contaminant, oil in any form, or petroleum product into the environment. The authorized officer may prescribe terms that allow the holder to replace, repair, restore, or otherwise undertake necessary curative actions to mitigate damages in addition to or as an alternative to monetary

indemnification.

I. INSURANCE. The holder shall furnish proof of insurance, such as a certificate of insurance, to the authorized officer prior to issuance of this permit and each year thereafter that this permit is in effect. The Forest Service reserves the right to review and approve the insurance policy prior to issuance. The holder shall send an authenticated copy of any insurance policy obtained pursuant to this clause to the authorized officer immediately upon issuance of the policy. Any insurance policies obtained by the holder pursuant to this clause shall name the United States as an additional insured, and the additional insured provision shall provide for insurance coverage for the United States as required under this clause. The policies shall also specify that the insurance company shall give 30 days prior written notice to the authorized officer of cancellation of or any modification to the policies. The certificate of insurance, the authenticated copy of the insurance policy, and written notice of cancellation or modification of insurance policies should be sent to Happy Camp / Oak Knoll Ranger District, PO Box 377, Happy Camp, CA 96039. Minimum amounts of coverage and other insurance requirements are subject to change at the sole discretion of the authorized officer on the anniversary date of this permit.

1. **Liability.** The holder shall have in force liability insurance covering losses associated with the use and occupancy authorized by this permit arising from personal injury or death and third-party property damage in the minimum amount of:

\$ 1,000,000.00 for injury or death to one person per occurrence,

\$ 1,000,000.00 for injury or death to more than one person per occurrence, and

\$ 25,000.00 for third-party property damage, per occurrence.

2. Depending on the holder's operations, the Forest Service may require the holder to demonstrate the availability of funds to address any release or threatened release of hazardous materials that may occur in connection with the holder's use and occupancy. Any requirements imposed would be established on a case-by-case basis by the authorized officer based on the degree of environmental risk from the holder's operations. The use and storage of normal maintenance supplies in nominal amounts generally would not trigger financial assurance requirements.

J. CONTRACTED SERVICES. The holder shall have in force an endorsement covering contracted services and equipment or, alternatively, the holder or the holder's contractor shall procure a separate insurance policy that covers these services.

IV. PERMIT FEES AND ACCOUNTING RECORDS

A. PERMIT FEE. The holder shall pay to the USDA, Forest Service, an annual permit fee for the term of this permit based on the fair market value of the use and occupancy authorized by this permit. The annual permit fee shall include a commercial use fee and, if applicable, an assigned site fee and grazing fee, as enumerated in clauses IV.B, C, and D. The minimum annual permit fee for the authorized use and occupancy shall be \$amount. Estimates of service days, the number of assigned sites, and grazing use shall be determined from the five-year or annual operating plan. Estimated fees shall be calculated on an Estimated Fee Determination Sheet. The holder shall pay the annual permit fee in advance of the authorized use and occupancy, as provided in clause IV.B. Payments due before commercial operations commence are not refundable. The Forest Service shall adjust and calculate permit fees authorized by this permit to comply with any new permit fee system based on market value that may be adopted by statute, regulation or directive issued by the Chief after issuance of this permit.

1. **COMMERCIAL USE FEE.** The annual permit fee shall be determined in accordance with Option B (3% of gross revenue).

(a) Definitions

(1) Adjusted Gross Revenue. Gross revenue and revenue additions less applicable exclusions.

(2) Gross Revenue. The total amount of receipts from the sale of goods or services provided by the holder or third party under the permit.

(3) Revenue Additions. The market value of the following items, which are added to gross revenue:

(A) The value of goods and services that are donated or the value of goods and services that are bartered in exchange for goods and services received that are directly related to the outfitted or guided trip; and

(B) The value of gratuities, which are goods, services, or privileges that are not available to the general public and that are donated or provided without charge to organizations; individuals; the holder's employees, owners, or officers; or immediate family members of the holder's employees, owners, or officers.

(4) Revenue Exclusions. The following are excluded from gross revenue:

(A) Revenue derived from goods or services sold on private land that are not related to outfitting and guiding operations conducted on National Forest System lands, such as souvenirs, telephone toll charges, and accident insurance sales.

(B) Amounts paid or payable to a State government licensing authority or recreation administering agency from sales of hunting or fishing licenses and recreation fee tickets.

(C) Revenue from the sale of operating equipment, rental equipment, capitalized assets, or other assets used in outfitting and guiding operations, such as horses, tack, watercraft, and rental skis and boots, which are sold periodically and replaced.

2. ASSIGNED SITE FEE. A fee shall be charged for the occupancy of National Forest System sites assigned to the holder. Assigned site fees shall not be prorated; the holder shall pay the full annual fee for each assigned site. No refunds or credits will be given for authorized but unused assigned sites.

3. GRAZING FEE. A fee shall be charged for grazing livestock used in conjunction with the use and occupancy authorized by this permit. No refunds or credits will be given for authorized but unexercised grazing use.

B. PAYMENT SCHEDULE. The holder shall pay the annual estimated permit fee, including the fee for commercial use, assigned site fee, and grazing fee, in advance of the authorized use, as follows:

1. Single Payment. The holder shall pay the total annual estimated fee in advance when it is less than \$500.

2. Two Payments. The holder shall pay half the total annual estimated fee in advance and the remainder by mid-season when the total is equal to or greater than \$500, but less than \$2,500.

3. Three Payments. The holder shall pay one-third of the total annual estimated fee in advance and the remainder in two equal payments by mid-season when the total is \$2,500 or more.

4. Final Payment. The Forest Service shall reconcile annually the actual permit fee against permit fee payments made. The holder shall pay any additional fees owed for the past year's operation within 30 days of billing.

C. DOCUMENTATION OF REVENUE. The holder shall provide documentation of use and revenue for purposes of permit fee verification.

1. Actual Use Report. Within 30 days of completion of the holder's approved operating season, the holder shall submit to the authorized officer an actual use report in accordance with the format in Appendix E.

2. Income Statements. No later than 90 days after the close of the holder's fiscal year, the holder shall submit to the authorized officer a statement of income reporting the results of the holder's annual operations. The statement shall include gross revenue, the value of donated goods and services, the value of gratuities, the value and description of items excluded from gross revenue, and all adjustments, such as taxes deducted, and shall be broken down by permitted activities.

D. FEE PAYMENT ISSUES

1. Crediting of Payments. Payments shall be credited on the date received by the deposit facility, except that if a payment is received on a non-workday, the payment shall not be credited until the next workday.

2. Disputed Fees. Fees are due and payable by the due date. Disputed fees must be paid in full. Adjustments will be made if dictated by settlement terms or an appeal decision.

3. Late Payments

(a) Interest. Pursuant to 31 U.S.C. 3717 et seq., interest shall be charged on any fee amount not paid within 30 days from the date it became due. The rate of interest assessed shall be the higher of the Prompt Payment Act rate or the rate of the current value of funds to the Treasury (i.e., the Treasury tax and loan account rate), as prescribed and published annually or quarterly by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. Interest on the principal shall accrue from the date the fee amount is due.

(b) Administrative Costs. If the account becomes delinquent, administrative costs to cover processing and handling the delinquency shall be assessed.

(c) Penalties. A penalty of 6% per annum shall be assessed on the total amount that is more than 90 days delinquent and shall accrue from the same date on which interest charges begin to accrue.

(d) Termination for Nonpayment. This permit shall terminate without the necessity of prior notice and opportunity to comply when any permit fee payment is 90 calendar days from the due date in arrears. The holder shall be responsible for the delinquent fees, as well as any other costs of restoring the site to its original condition, including hazardous waste cleanup.

4. Administrative Offset and Credit Reporting. Delinquent fees and other charges associated with the permit shall be subject to all rights and remedies afforded the United States pursuant to 31 U.S.C. 3711 et seq. and common law. Delinquencies are subject to any or all of the following:

(a) Administrative offset of payments due the holder from the Forest Service.

(b) If in excess of 60 days, referral to the Department of the Treasury for appropriate collection action as provided by 31 U.S.C. 3711(g)(1).

(c) Offset by the Secretary of the Treasury of any amount due the holder, as provided by 31 U.S.C. 3720 et seq.

(d) Disclosure to consumer or commercial credit reporting agencies.

E. ACCOUNTING RECORDS. The holder shall follow generally accepted accounting principles or another comprehensive basis of accounting, such as the cash, modified cash, or income tax basis of accounting, in recording financial transactions. The minimum acceptable accounting system shall include:

1. Systematic internal controls and separate recording of gross receipts from each type of business conducted under this permit, separate from any other commercial or personal activity. Receipts shall be recorded daily without reduction and, if possible, deposited into a bank account. Receipt entries shall be supported by documentation such as cash register tapes, sales invoices, reservation records, and cash accounts from other sources.

2. For permits with fees greater than \$10,000, when requested by the Forest Service, the holder at its own expense shall have its annual accounting records audited by an independent public accountant acceptable to the Forest Service.

F. ACCESS TO ACCOUNTING RECORDS. The holder shall make all of the accounting books and supporting records for the business activities authorized by this permit available for audit by the Forest Service or other federal agencies authorized to review Forest Service activities. The holder shall retain these records and make them available for review for five years after the end of the year they were generated, unless disposition is otherwise authorized by the Forest Service in writing.

V. RESOURCE PROTECTION

A. COMPLIANCE WITH ENVIRONMENTAL LAWS. The holder shall in connection with the use and occupancy authorized by this permit comply with all applicable federal, state, and local environmental laws and regulations, including but not limited to those established pursuant to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., the Oil Pollution Act, as amended, 33 U.S.C. 2701 et seq., the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. 9601 et seq., the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136 et seq., and the Safe Drinking Water Act, as amended, 42 U.S.C. 300f et seq.

B. VANDALISM. The holder shall take reasonable measures to prevent and discourage vandalism and disorderly conduct and when necessary shall contact the appropriate law enforcement officer.

C. HERBICIDE AND PESTICIDE USE. Herbicides and pesticides may not be used to control

undesirable woody and herbaceous vegetation, aquatic plants, insects, rodents, fish, and other pests and weeds without prior written approval from the authorized officer. A request for approval of planned uses of pesticides shall be submitted annually by the holder on the due date established by the authorized officer. The report shall cover a 12-month period of planned use beginning 3 months after the reporting date. Information essential for review shall be provided in the form specified. Exceptions to this schedule may be allowed, subject to emergency request and approval, only when unexpected outbreaks of pests or weeds require control measures that were not anticipated at the time an annual report was submitted. Only those materials registered by the U.S. Environmental Protection Agency for the specific purpose planned shall be considered for use on National Forest System lands. Label instructions and all applicable laws and regulations shall be strictly followed in the application of pesticides and disposal of excess materials and containers.

D. ARCHAEOLOGICAL-PALEONTOLOGICAL DISCOVERIES. The holder shall immediately notify the authorized officer of any antiquities or other objects of historic or scientific interest, including but not limited to historic or prehistoric ruins, fossils, or artifacts discovered as the result of operations under this permit. The holder shall leave such discoveries intact until authorized to proceed by the authorized officer. Protective and mitigative measures specified by the authorized officer shall be the responsibility of the holder.

E. PROTECTION OF HABITAT OF ENDANGERED, THREATENED, AND SENSITIVE SPECIES. Location of areas needing special measures for protection of plants or animals listed as threatened or endangered under the Endangered Species Act (ESA), 16 U.S.C. 531 et seq., as amended, or as sensitive by the Regional Forester under the authority of Forest Service Manual Chapter 2670, derived from ESA Section 7 consultation, may be shown on a separate map, hereby made a part of this permit, or identified on the ground. Protective and mitigative measures specified by the authorized officer shall be the sole responsibility of the holder. If protective measures prove inadequate, if other such areas are discovered, or if new species are listed as federally threatened or endangered or as sensitive by the Regional Forester, the authorized officer may specify additional protection, regardless of when such facts become known. Discovery of such areas by either party shall be promptly reported to the other party.

F. CONSENT TO STORE HAZARDOUS MATERIALS. The holder shall not store any hazardous materials at the site without prior written approval from the authorized officer. This approval shall not be unreasonably withheld. If the authorized officer provides approval, this permit shall include, or in the case of approval provided after this permit is issued, shall be amended to include specific terms addressing the storage of hazardous materials, including the specific type of materials to be stored, the volume, the type of storage, and a spill plan. Such terms shall be proposed by the holder and are subject to approval by the authorized officer.

G. CLEANUP AND REMEDIATION.

1. The holder shall immediately notify all appropriate response authorities, including the National Response Center and the authorized officer, of any oil discharge or of the release of a hazardous substance at the site in an amount greater than or equal to its reportable quantity, in accordance with 33 CFR Part 153, Subpart B, and 40 CFR Part 302. For the purposes of this requirement, "oil" is as defined by section 311(a)(1) of the Clean Water Act, 33 U.S.C. 1321(a)(1). The holder shall immediately notify the authorized officer upon knowledge of any release or threatened release of any hazardous material at or in the vicinity of the permit area which may be harmful to public health or welfare or which may adversely affect natural resources under the management of the United States.

2. Except with respect to any federally permitted release as that term is defined under Section 101(10) of CERCLA, 42 U.S.C. 9601(10), the holder shall clean up or otherwise remediate any release, threat of release, or discharge of hazardous materials that occurs either on site or in connection with the holder's activities, whether or not those activities are authorized under this permit. The holder shall perform cleanup or remediation immediately upon discovery of the release, threat of release, or discharge of hazardous materials. The holder shall perform the cleanup or remediation to the satisfaction of the authorized officer and at no expense to the United States. Upon revocation or termination of this permit, the holder shall deliver the site to the Forest Service free and clear of contamination.

H. CERTIFICATION UPON REVOCATION OR TERMINATION. If the holder uses or stores hazardous materials at the site, upon revocation or termination of this permit the holder shall provide the Forest Service with a report certified by a professional or professionals acceptable to the Forest Service that the site covered by this permit is uncontaminated by the presence of hazardous materials and that there has not been a release or discharge of hazardous materials upon the site, into surface water at or near the site, or into groundwater below the site during the term of the permit. This certification requirement may be waived by the authorized officer when the Forest Service determines that the risks posed by the hazardous material are minimal. If a release or discharge has occurred, the professional or professionals shall document and certify that the release or discharge has been fully remediated and that the site is in compliance with all federal, state, and local laws and regulations.

VI. REVOCATION, SUSPENSION, AND TERMINATION

A. REVOCATION AND SUSPENSION. The authorized officer may revoke or suspend this permit in whole or in part:

1. For noncompliance with federal, state, or local laws and regulations;
2. For noncompliance with the terms of this permit;
3. For failure of the holder to exercise the privileges granted by this permit;
4. With the consent of the holder; or
5. At the discretion of the authorized officer, for specific and compelling reasons in the public interest.

B. REVOCATION BASED ON PERFORMANCE RATING. If the holder receives an annual rating of unacceptable based on deficiencies identified but uncorrected in a mid-season review and evaluation, the Forest Service shall revoke this permit or, if it is about to expire, shall allow it to terminate.

C. NOTICE AND OPPORTUNITY TO TAKE CORRECTIVE ACTION. Prior to revocation or suspension under clause VI.A. or VI.B, the authorized officer shall give the holder written notice of the grounds for the action to be taken. For purposes of revocation under clause VI.B, written notice must be given to the holder after a review and evaluation that if the identified deficiencies are not corrected, they will result in an annual rating of unacceptable, which in turn will result in revocation of the permit. Prior to revocation or suspension under clause VI.A.1, 2, or 3 or revocation under clause VI.B, the authorized officer also shall give the holder a reasonable opportunity to complete corrective action prescribed by the authorized officer. The period between the review and evaluation and the annual rating shall constitute adequate opportunity to take corrective action for purposes of revocation under clause VI.B.

D. IMMEDIATE SUSPENSION. The authorized officer may immediately suspend this permit in whole or in part when necessary to protect public health or safety or the environment. The suspension decision must be in writing. Within 48 hours of the request of the holder, the superior of the authorized officer shall arrange for an on-the-ground review of the adverse conditions with the holder. Following this review, the superior shall take prompt action to affirm, modify, or cancel the suspension.

E. APPEALS AND REMEDIES. Any written decisions by the authorized officer relating to administration of this permit, including annual ratings of probationary and unacceptable and revocation or suspension decisions are subject to the administrative appeal regulations at 36 CFR Part 251, Subpart C, as amended. Revocation or suspension of this permit shall not give rise to any claim for damages by the holder against the Forest Service.

F. TERMINATION. This permit shall terminate when by its terms a fixed or agreed upon condition, event, or time occurs without any action by the authorized officer. Examples include but are not limited to expiration of the permit by its terms on a specified date and termination upon change of control of the business entity. Termination of this permit is not subject to administrative appeal and shall not give rise to any claim for damages by the holder against the Forest Service.

G. REMOVAL OF TEMPORARY IMPROVEMENTS. Upon revocation or termination of this permit, the holder shall remove within a reasonable time prescribed by the authorized officer all temporary improvements, except those owned by the United States, and shall restore the site. If the holder fails to remove all temporary improvements within the prescribed period, they shall become the property of the United States and may be sold, destroyed, or otherwise disposed of without any liability to the United States. However, the holder shall remain liable for all costs associated with their removal, including costs of sale and impoundment, cleanup, and restoration of the site.

VII. MISCELLANEOUS PROVISIONS

A. ADVERTISING. The holder shall not misrepresent in any way, either orally, in its circulars, brochures, advertising, and other materials, or on its website, signs, or letterheads, any aspect of the use authorized by this permit, including services provided by the holder, the status of this permit, or the area it covers. All of the holder's circulars, brochures, and advertising and its website regarding use of the permit area shall state that the permit area is located in the Klamath National Forest.

B. CURRENT ADDRESSES. The holder and the Forest Service shall keep each other informed of current mailing addresses, including those necessary for payment of fees.

C. SERVICES NOT PROVIDED. This permit does not provide for the furnishing of road or trail maintenance, water, fire protection, search and rescue, or any other service by a government agency, utility, association, or individual.

D. MEMBERS OF CONGRESS. No member of or delegate to Congress or resident commissioner shall benefit from this permit either directly or indirectly, except to the extent the authorized use provides a general benefit to a corporation.

E. SUPERSEDED PERMIT. This permit supersedes a permit designated HAP240 and dated 2005.

F. SUPERIOR CLAUSES. In the event of any conflict between any of the preceding printed clauses and any subsequent clauses or any provisions in the appendices attached to this permit, the preceding

printed clauses shall control.

This permit is accepted subject to all its terms and conditions.

HOLDER: Marble Mountain Guest Ranch	U.S. DEPARTMENT OF AGRICULTURE
By: <u>Douglas T. Cole</u>	By: <u>Kenneth L. Thomas</u>
(Holder or Holder's Agent)	KEN HARRIS District Ranger
Date: <u>3/25/2010</u>	Date: <u>4/15/10</u>

The following certificate shall be executed by the secretary or assistant secretary of the corporation:

I Douglas T. Cole certify that I am the select Secretary of Assistant Secretary of
(name of Secretary or Assistant Secretary)

the corporation that executed the above permit; that Douglas T. Cole who signed this
(name of signatory)

permit on behalf of name of holder was then C.E.O. of that
(title of signatory)

corporation; that I know his/her signature; that his/her signature on this permit is genuine; and that this permit was signed, sealed, and attested to on behalf of name of holder by authority of its board of directors.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

From: (Public Agency): _____

County Clerk _____

County of: _____

(Address)

Project Title: Marble Mountain Ranch Diversion

Project Applicant: Marble Mountain Ranch, Douglas T. Cole

Project Location - Specific:

The project is about 8 miles north of Somes Bar, on Stanshaw Creek, 0.87 miles upstream from the Klamath River.

Project Location - City: Somes Bar Project Location - County: Siskiyou

Description of Nature, Purpose and Beneficiaries of Project:

Marble Mountain Ranch diverts water from Stanshaw Creek for irrigation, recreation, domestic, and small hydro-electric use. The already existing diversion structures require regular maintenance and a 1600 agreement with the California Department of Fish and Wildlife.

Name of Public Agency Approving Project: California Department of Fish and Wildlife

Person or Agency Carrying Out Project: _____

Exempt Status: (check one):

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: Existing Facility, Section 15301
- Statutory Exemptions. State code number: _____

Reasons why project is exempt:

The diversion structure and culvert are already existing facilities that require regular maintenance. The maintenance does not expand the use or footprint of the existing facilities.

Lead Agency

Contact Person: _____ Area Code/Telephone/Extension: _____

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: _____ Date: _____ Title: _____

Signed by Lead Agency Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____