

DOUGLAS AND HEIDI COLE AND  
MARBLE MOUNTAIN RANCH – WASTE  
AND UNREASONABLE USE HEARING

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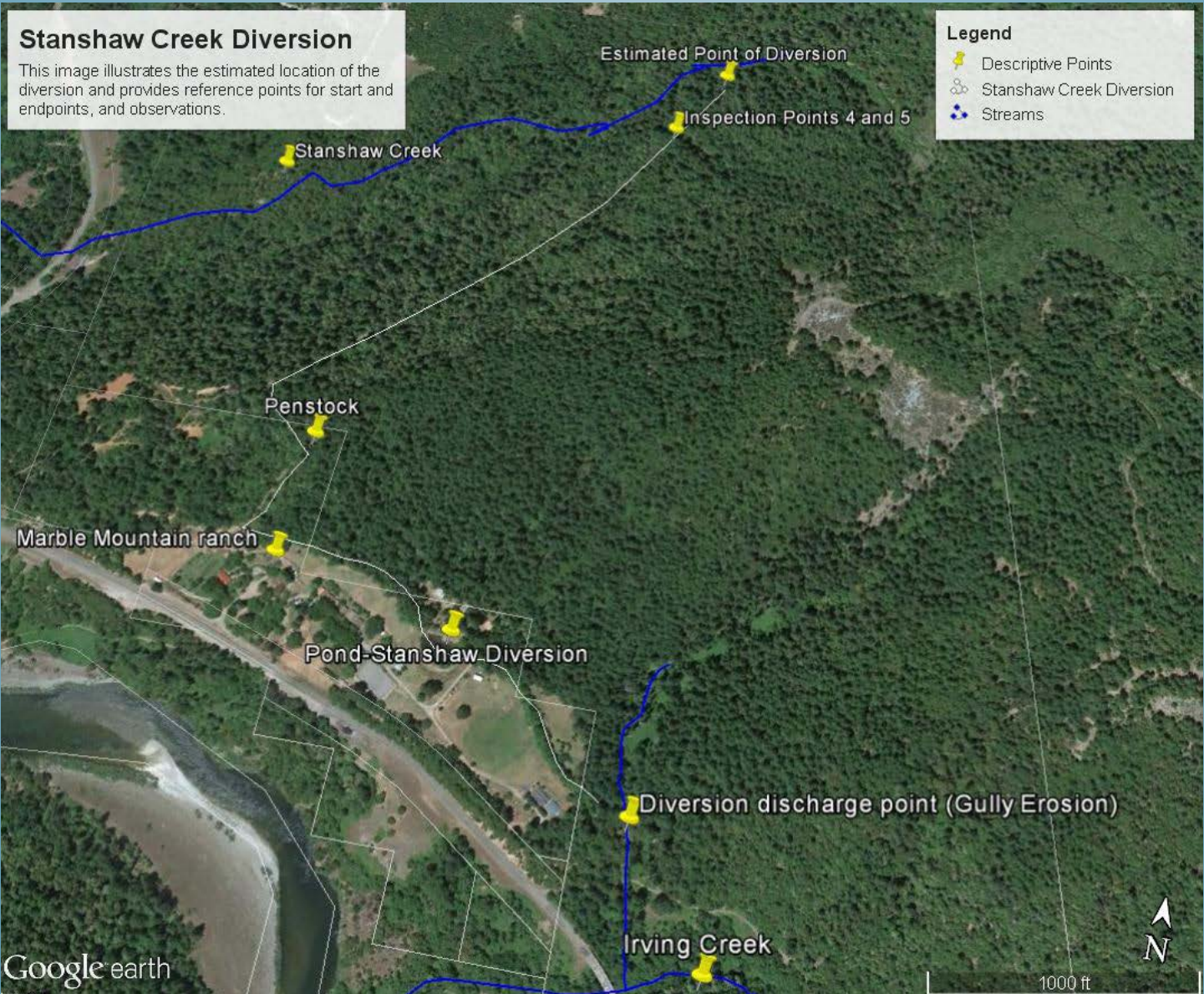
*Office of Enforcement*

*State Water Resources Control Board*

# MARBLE MOUNTAIN RANCH



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# DIVERSION WORKS

POD



Stanshaw Creek

Diversion Ditch



Diversion Ditch

Prior Landslides



Hydropower System

Irving Creek Outfall



# THE KLAMATH RIVER

- Part of Wild and Scenic River System
- Must be preserved in free-flowing state, together with its immediate environment, for the benefit and enjoyment of the people of the state. (Pub. Res. Code, § 5093.50, subd. (a).)
- “Use of these rivers is the highest and most beneficial use and is a reasonable and beneficial use of water within the meaning of Section 2 of Article X of the California Constitution.”

# STANSHAW CREEK



Cold Water Pool



# CLAIMED WATER RIGHTS

- Pre-1914 claim of appropriation filed 1867 by E. Stanshaw
  - Today claims 3 cfs
  - Beneficial uses - Domestic use, irrigation, stock watering, recreation, hydropower
- Statement of Water Diversion and Use S015022
- Statement of Water Diversion and Use S016375
- D030945R (1999) - Pond for recreation and fire prevention
- Recent consumptive use estimates 0.183-0.235 cfs

# CURRENT INVESTIGATION





# CURRENT INVESTIGATION – FISH KILL



Dead Coho

# FEBRUARY 2015 INSPECTION



# NMFS FLOW RECOMMENDATION

- Daily, year-round requirement
- Applies to all diverters on Stanshaw Creek
- Protective of coho by preserving cold water refugia at confluence of Klamath River
- When diversion for hydropower are not occurring 90% of the unimpaired flow must be by-passed at the POD.
- When diversion for hydropower are occurring diverters may meet the 90% unimpaired bypass flow by returning hydropower tailwater to Stanshaw Creek above the point of anadromy so long as they bypass 2 cfs at their POD.

## REGIONAL WATER BOARD CLEANUP AND ABATEMENT ORDER R1-2016-0031

- Issued by Regional Water Board August 4, 2016
- Ordered Diverters to clean up and abate discharges of soil, rock and miscellaneous debris into Irving Creek, Stanshaw Creek, and the Klamath River
- Diverters filed petition for reconsideration by the State Water Board on September 6, 2016
- State Water Board took no action
- No petition for writ of mandate filed
- Three notices of violation

# CONSTITUTIONAL PROHIBITION ON WASTE AND UNREASONABLE USE

- State Constitution Article X, § 2 and Water Code § 100
- Water rights limited to diversion and use reasonably required for beneficial use
- No right to waste, unreasonable use, unreasonable method of use, or unreasonable method
- Self-executing
- Mutable
- Statutes and regulations can establish per se standards of reasonableness (ex – Russian River frost regs.)

# PUBLIC TRUST DOCTRINE

- State, as sovereign, “owns all of its navigable waterways and the lands lying beneath them as trustee of a public trust for the benefit of the people.”
- Evolves in tandem with the changing public perception of the values and uses of waterways
- Prevents any party from acquiring a vested right to divert or use water in a manner harmful to the interests protected by the public trust
- Must conform to doctrine of reasonable use
- Diversion harmful to public trust resources can constitute misuse of water

# STATE WATER BOARD ENFORCEMENT AUTHORITY

- Prevent misuse of water regardless of basis of right
- Protect public trust resources
- Shall take all appropriate actions to prevent misuse of water (Water Code § 275)
- Regulations direct staff to investigate misuse
- After hearing may issue order enforceable under Water Code § 1846 or through cease and desist order under Water Code § 1831

# HEARING REQUEST AND DRAFT ORDER

- Investigation conducted under continuing authority to prevent misuse
- Staff notified Diverters December 3, 2015 misuse occurring
- Diverters offered to eliminate misuse by June 30, 2018
- Interim milestones and time schedule would ensure misuse addressed timely
- Milestones not met
- Hearing requested August 30, 2017



# KEY ISSUE 1 – MISUSE OF WATER

Does the past or current diversion or use of water by Douglas and Heidi Cole and Marble Mountain Ranch constitute a waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water, particularly in light of any impacts to public trust resources?

## KEY ISSUE 1 – MISUSE OF WATER (CONT.)

- No diversion measurement device or method
- No fish screen
- No reasonable method of regulating diversion
- Diversion impacts public trust resources
- Dewateres Stranshaw Creek
- Divert in excess of beneficial use requirements
- Ditch failures discharge waste to Stanshaw Creek
- Hydropower effluent discharges waste to Irving Creek

## KEY ISSUE 2 – CORRECTIVE ACTIONS AND TIME SCHEDULE

If the past or current diversion or use of water by Douglas and Heidi Cole and Marble Mountain Ranch constitutes a waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water, what corrective actions, if any, should be implemented, and with what time schedule should they be implemented?

## KEY ISSUE 2 – CORRECTIVE ACTIONS AND TIME SCHEDULE (CONT.)

- Energy and water efficiency audit
- Measure water diversion
- Install structure or implement method reasonably capable of regulating diversion
- Eliminate ditch failures and overtopping
- Implement NMFS bypass flows

## KEY ISSUE 2 – COORDINATION WITH REGIONAL WATER BOARD

How should the implementation time schedule for any corrective actions be coordinated with the requirements of the Cleanup and Abatement Order issued by the North Coast Regional Water Quality Control Board?