
North Coast Regional Water Quality Control Board

October 18, 2016

Douglas Cole et. al.
100 Tomorrow Rd.
Somes Bar, CA. 95569

Dear Douglas and Heidi Cole:

Subject: **Notice of Violation** of 13267/Cleanup and Abatement Order No. R1-2016-0031 (CAO)

File: Douglas and Heidi Cole, Marble Mountain Ranch, 92520 Highway 96, Somes Bar: Siskiyou County APN 026-290-200 Klamath River Watershed, WDID No. 1A15024NSI

The purpose of this letter is to notify you that you are in violation of the above-referenced CAO.

On August 4, 2016, the Regional Board Executive Officer issued the subject 13267 Cleanup and Abatement Order (Order) requiring development of scientific reports and assessments, mitigation and restoration designs, and implementation of the restoration and mitigation after approval by the Executive Officer. As of September 10, 2016, you are in violation of the following directives in the Order:

Directive No. 2 - Retain an appropriately licensed and experienced California- licensed professional to evaluate, assess, and develop a Restoration and Monitoring Plan (RMP) to restore and stabilize the head cut and slope at the outlet of the Stanshaw Creek diversion to the unnamed tributary of Irving Creek. Submit the plan by **September 10, 2016** to the Executive Officer for review and approval.

This assessment is necessary and timely due to the extensive erosion at the outfall of the ditch as it enters the unnamed tributary to Irving Creek. It is likely that during the winter period this ditch will again carry flows to this location through interception of rainfall, snowmelt and ground water, which may result in additional erosion of the head cut.

Directive No. 4a - Regardless of the ultimate water delivery system, the following additional measures shall be taken by **September 10, 2016** to protect water quality: Assess slopes

between the upper ditch and Stanshaw Creek and the streambed of Stanshaw Creek and Irving Creek and the unnamed tributary to Irving Creek for stored sediment deposits and erosional sources associated with the past and current failures of the ditch. Identify all erosional issues and those that should be corrected, propose corrective measures and provide a schedule for implementing corrective measures.

The Discharger contends the proposed long-term fix of piping water through the ditch results in no discharge of pollutants from the ditch and hence there is now no reason to evaluate the ditch. However, we, the Regional Water Board, contend preferential erosion pathways and/or areas requiring restoration in streams due to past ditch failures and/or ditch diversion points exist as active erosional sources and issues that require inventory, mitigation design for restoration, and corrective action implementation upon inventory and design approval by the Executive Officer. Although the long-term corrective action of piping water through the existing ditch may alleviate some or most of the failures and threatened discharges if the ditch is decommissioned as a surface feature and cut bank slopes are laid back to a stable angle; we do not have such a design to evaluate for a long-term corrective action that would allow us to ensure all required mitigations are accomplished. The designs are incomplete in terms of addressing the issues identified above in directive 4.a.

In conclusion, the ditch, if not treated appropriately, still retains the capacity to flow by capturing rainfall and intercepting groundwater during the wet season. Even if flows in the ditch are lower, these flows may continue to exacerbate existing conditions. The Order's September 10, 2016 deadline for Directive 4.a., allowed the Regional Water Board time to review any information submitted and approve any immediate restoration or erosion control work necessary to prevent, minimize and mitigate for discharges that are likely to occur this winter period. A failure to comply with this directive likely results in continued erosion throughout this 2016/2017 winter period.

Directive 4b – Ensure that water used onsite, conveyed in the ditch and discharged does not adversely impact waters of the state. Develop a sampling plan to assess the quality of water in the ditch as it passes through the ranch property for potential sources of fecal coliform, total coliform, total petroleum hydrocarbons, temperature, and nutrients. The sampling plan shall assess water quality above the diversion and ranch complex, and below the ranch complex to evaluate if there are any pollutants entering the surface waters from the ditch or pond. Submit the Sampling Plan for approval by the Executive Officer by **September 10, 2016**. Upon approval, implement the sampling plan and provide results of the sampling by **November 1, 2016**. In the event that sampling identifies inputs of constituents of concern, then develop a plan to remedy the discharges and submit the plan by **December 1, 2016** to the Executive Officer for review and approval.

Directive 4.b. has been met with the Sampling Plan received via email on September 9, 2016. Although the plan does not address our original concern regarding potential pollutants from the ranch entering the ditch and downstream receiving waters during high

flows and summer low flow periods, we are accepting it as proposed due to the current limited use of the ditch. In the event the ditch is used throughout the season again, we will likely request a revised sampling schedule.

As a reminder, the Order directives lay out time frames for reporting on aspects of the ditch operation, use, and maintenance that should guide the process of developing a solution that meets all requirements. The delayed submittal of your restoration and monitoring plan required by Directive No. 2 delays your ability to apply for any required permits and may prevent you from completing the required scope of work within the CAO-directed timeframe.

In accord with Directive No. 5, Progress reports are due quarterly starting on October 1, 2016. A prompt return to compliance regarding required directive deliverables and maintaining compliance with other directive deadlines and requirements will likely abrogate the need to address the violations identified herein through progressive enforcement.

Ongoing and additional violations of Order directives subject you to penalties of \$5,000 per day under section 13350 for each day of violation, and in the event of discharges, you may be fined up to \$10,000 per day and \$10 per gallon for each day of discharge under section 13385 of the California Water Code.

We received your letter requesting Order deadline extensions via email on the evening of August 26, 2016. We are willing to consider reasonable extensions to Order directives and amend the Order in the event the Cole family dismisses the petition submitted to the State Water Resources Control Board.

If you have any questions, please contact Stormer Feiler of my staff by email at Stormer.Feiler@waterboards.ca.gov, or by phone at (707) 543-7128, or his supervisor, Diana Henriouille, by email at Diana.Henriouille@waterboards.ca.gov, or by phone at (707) 576-2350.

Sincerely,


FOR:  Digitally signed by Joshua
Curtis
Date: 2016.10.18 08:44:00
-07'00'

Shin-Roei Lee
Assistant Executive Officer

161018_SRF_Marble_Mountain_Ranch_Notice_of_Violation

Certified-Return Receipt Requested

cc by email:

Barbara Brenner
Churchwell White LLP
1414 K St., 3rd Floor
Sacramento, CA 95814
Barbara@churchwellwhite.com

Konrad Fisher
100 Tomorrow Rd.
Somes Bar, CA 95568
k@omrl.org

California Sportfishing Protection Alliance
1608 Francisco Street
Berkeley, CA 94703
bjennings@calsport.org

Klamath National Forest
Ukonom Ranger District
c/o Mr. Jon Grunbaum
P.O. Drawer 410
Orleans, CA 95556

cc list: electronic copies continued next page.

cc: *(via email only)*

Department of Fish and Wildlife
Gary Curtis
Gary.Curtis@wildlife.ca.gov

Donna Cobb,
Donna.Cobb@wildlife.ca.gov

Janae Scruggs
Janae.Scruggs@wildlife.ca.gov

North Coast Regional Water Quality Control Board
Ms. Diana Henriouille
Diana.Henriouille@waterboards.ca.gov

Stormer Feiler
Stormer.Feiler@waterboards.ca.gov

State Water Resources Control Board
Taro Murano,
Taro.Murano@waterboards.ca.gov

Ken Petruzzeli
Kenneth.Petruzzelli@Waterboards.ca.gov

National Oceanic Atmospheric Administration
Margaret Tauzer
margaret.tauzer@noaa.gov

Bob Pagliuco
bob.pagliuco@noaa.gov

Natural Resource Policy Advocate
Craig Tucker
Karuk Tribe
ctucker@karuk.us

Mid Klamath Watershed Council
Will Harling
will@mkwc.org

United States Forest Service
LeRoy Cyr
lcyr@fs.fed.us

Cascade Stream Solutions
Joey Howard
joey@cascadestreamsolutions.com