

KENNETH PETRUZZELLI (SBN 227192)
HEATHER MAPES (SBN 293005)
OFFICE OF ENFORCEMENT
STATE WATER RESOURCES CONTROL BOARD
801 K Street, 23rd Floor
Sacramento, California 95812-0100
Tel: (916) 319-8577
Fax: (916) 341-5896

Attorneys for the Division of Water Rights Prosecution Team

BEFORE THE STATE WATER RESOURCES CONTROL BOARD
STATE OF CALIFORNIA

In the Matter of:
DOUGLAS AND HEIDI COLE AND
MARBLE MOUNTAIN RANCH

)
) DECLARATION OF TARO MURANO IN
) SUPPORT OF ORDER FINDING WASTE,
) UNREASONABLE USE,
) UNREASONABLE METHOD OF USE,
) OR UNREASONABLE METHOD OF
) DIVERSION OF WATER AND
) ORDERING CORRECTIVE ACTIONS
) AGAINST
)
)

I, Taro Murano, declare as follows:

1. My testimony, herein provided, identifies my personal knowledge of the evidence, actions, and rationale for the State Water Resources Control Board (“State Water Board”) Division of Water Rights’ (“Division”) recommendation to issue an order (“Order”) finding waste, unreasonable method of use, and unreasonable method of diversion of water, as well as public trust violations, and ordering corrective actions against Douglas and Heidi Cole and Marble Mountain Ranch (collectively “the Diverter” or “Diverters”). The Prosecution Team’s proposed order (“Draft Order”) is offered into evidence as **Prosecution Team Exhibit WR-1**.¹ A true and correct copy of the Prosecution Team’s hearing request is offered into evidence as **Prosecution Team Exhibit WR-2**.
2. I have been an employee of the State Water Board for the past 12 years. I am currently employed as a Senior Environmental Scientist for the North Coast Enforcement Unit in the

¹ Further references to Prosecution Team exhibits will be “WR-[Exhibit Number].”

Division of Water Rights Enforcement Section. My statement of qualifications is offered into evidence as **Prosecution Team Exhibit WR-8**.

3. My role in this enforcement action is to provide testimony regarding the Diverter's claimed water rights and their history with the Division leading up to the current enforcement action. I will also discuss the stakeholder process that started on December 17, 2014 to discuss the findings of an independent study that reviewed the Diverter's basis of water right.
4. Marble Mountain Ranch ("MMR") is located at 92520, Highway 96 in Somes Bar, Siskiyou County. MMR is owned and operated by the family of Douglas and Heidi Cole. MMR functions as a commercial guest ranch that offers activities such as horseback trail riding, hiking, whitewater rafting, jet boat rides, sport shooting, fly fishing and kayaking. They market themselves as a sustainable ranch and a destination for ecotourism.
5. I have reviewed the records of the State Water Board for water rights held and/or claimed by the Diverter. The Diverter has a long history with the State Water Board, summarized in the Draft Order (WR-1) beginning on page 5.
6. The Diverter diverts surface water from Stanshaw Creek, a tributary to the Klamath River, under a pre-1914 claim of right in two Statements of Water Diversion and Use ("Statements") - S015022 and S016375. The Diverter also has one Small Domestic Use Registration, D030945R, filed on December 1, 1998. The Division has no records of other water right claims by the Diverter.
7. The Diverter uses the same point-of-diversion ("POD") for all of its water rights. The POD for the Diverter's water rights is located on Stanshaw Creek. The POD is situated on land owned by the United States Forest Service ("USFS").
8. The Diverter's POD is located approximately three-quarters of a mile upstream of the Highway 96 crossing, on USFS property. The POD consists of a handmade rock wing diversion dam located on the east creek bank of the Stanshaw Creek channel. The rock wing diversion dam extends about halfway across the channel. An unlined ditch conveys the water approximately one-half mile to MMR. According to the Diverter, the POD and ditch were constructed in the late 1860's. The Diverter has continued to rely on these methods of diverting water.
9. The place of use is MMR. MMR diverts up to 3 cfs, roughly the capacity of the diversion ditch, primarily for hydropower. Other uses include domestic use, irrigation, and fire

- prevention. When the Diverters are diverting 3 cfs to run hydropower, the Diverters discharge the non-consumptive water southeast to Irving Creek, another tributary to the Klamath River.
10. According to the Marble Mountain Ranch Stanshaw Creek Water Rights Report, prepared by Lennihan Law, P.C., and discussed more fully in paragraph 22, Stanshaw Creek has a drainage area of approximately four square miles. It has a short but significant section of habitat for Coho salmon (*Onchorhynchus Kisutch*) below the Highway 96 crossing, including an off-channel pond or pool located just upstream of its confluence with the Klamath River. This pool is filled by cold Stanshaw Creek water when high flows in the Klamath River subside, creating a high quality summer and winter rearing habitat for non-natal juvenile Coho salmon migrating down the Klamath River corridor. The National Marine Fisheries Service (NMFS), DFW, and the Karuk Tribe, have asserted that the Diverter's diversion and use of water adversely impact Coho salmon in violation of the federal Endangered Species Act and other laws. According to the Ross Taylor and Associates Report, prepared for the Karuk Tribe in January 2015, while both Juvenile Coho salmon and steelhead have been documented in Stanshaw Creek, the creek's moderate channel slope and relative lack of suitable-sized substrate diminishes its importance as a significant spawning stream within the Klamath River watershed. However, an off-channel pond provides excellent habitat for both summer and winter rearing of non-natal Coho salmon. A true and correct copy of the Ross-Taylor and Associates Report was received by Division enforcement staff in January 2015. A true and correct copy of the Ross Taylor and Associates Report is offered into evidence as **Prosecution Team Exhibit WR-93**.
11. In Water Right Order 91-07, the State Water Board declared the Klamath River fully appropriated "from the main stem about 100 yards below Iron Gate Dam to the Pacific Ocean," from January 1 through December 31 of each year, as a result of its designation as part of the wild and scenic river system. With respect to streams that are part of the Wild and Scenic Rivers system, Water Right Order 91-07 states:
- In accordance with Public Resources Code, Division 5, Chapter 1.4, California Wild and Scenic Rivers Act, Section 5093 *et seq.*, it is the policy of the State of California, that certain rivers which possess extraordinary scenic, recreational, fishery, or wildlife values shall be preserved in their free-flowing state, together with their immediate environments, for the benefit and enjoyment of the people of the state. The Legislature declares that such 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.

- For tributaries, the State Water Board noted “limitations on availability of unappropriated water in a particular stream should generally apply to tributary streams ‘if, and to the extent that, such tributary is hydraulically continuous to the downstream system.’” The State Water Board renewed these determinations in Water Right Order 98-08. A true and correct copy of Water Right Order 91-07 is offered into evidence by reference, pursuant to California Code of Regulations, title 23, section 648.3, as **Prosecution Team Exhibit WR-170**. A true and correct copy of Water Right Order 98-08 is offered into evidence by reference, pursuant to California Code of Regulations, title 23, section 648.3, as **Prosecution Team Exhibit WR-171**.
12. The Diverter’s pre-1914 claim of appropriation originates from an 1867 claim by Mr. E. Stanshaw for six hundred (600) miner’s inches, or 15 cfs, to be used for mining, domestic and irrigation purposes on a large patented parcel that includes the present-day MMR property. A true and correct copy of the 1867 claim is offered into evidence as **Prosecution Team Exhibit WR-16**. A typed version is offered into evidence as **Prosecution Team Exhibit WR-15**.
 13. The patent date for the original parcel was March 27, 1911. A true and correct copy of the Diverter’s grant deed, provided by the Diverter, includes the original 1911 patent and is offered into evidence as **Prosecution Team Exhibit WR-27**. An assessor parcel map depicting the Diverter’s property and the neighboring Fisher property is offered into evidence as **Prosecution Team Exhibit WR-25**.
 14. Application 29449 was filed by the Diverter’s predecessors in interest, Robert E. and Mary Judith Young, in 1989. Application 29449 sought to appropriate 2,168 acre-feet per year of water, at a rate of 3 cubic feet per second (cfs), from Stanshaw Creek, from January 1 to December 31, for the purposes of fish and wildlife protection and/or enhancement and power generation. The Diverter took ownership of the diversion under Application 29449 in 1994. The file for Application 29449 is offered into evidence by reference, pursuant to California Code of Regulations, title 23, section 648.3. A true and correct copy of Volume 1 of the application file, Bates stamped for reference, is offered into evidence as **Prosecution Team Exhibit WR-4**. A true and correct copy of Volume 2 of the application file, Bates stamped for reference, is offered into evidence as **Prosecution Team Exhibit WR-5**. A true and correct copy of the complaints and investigations file, Bates stamped for

reference, is offered into evidence as **Prosecution Team Exhibit WR-6**. Since these are scanned versions of the physical files, the first page has the most recent document. The oldest document is at the end. A true and correct copy of the letter to the Division documenting the transfer of ownership and dated November 17, 1994, is contained in the file for Application 29449 (*see* WR-4, Bates stamp p. 407) and offered into evidence separately as **Prosecution Team Exhibit WR-24**. The application file is available at the State Water Board's records room.

- a. In a letter dated April 13, 1993 responding to questions from Division staff processing Application 29449, legal counsel for the Youngs stated that although the Youngs were unsure when the hydropower turbine was installed, the prior property owner had indicated to them that the hydropower turbine was installed between 1940 and 1942. The Youngs also had no objections to the Division staff recommendations of 0.02 cfs for domestic use and 0.09 cfs for irrigation purposes. A true and correct copy of the April 13, 1993 letter is available in the file for Application 29449 (WR-4, Bates stamp p. 430) and offered into evidence separately as **Prosecution Team Exhibit WR-23**.
- b. The NMFS, USFS, Department of Fish and Game ("DFG"), and California Sportfishing Protection Alliance ("CSPA") filed protests against Application 29449, alleging the project would adversely affect resident fish species. James and Phylis Fisher, property owners downstream of MMR, filed a protest alleging that the Diverter's proposed project would drastically reduce flows in Stanshaw Creek, especially during the dry season, resulting in insufficient water for their domestic and irrigation needs, and causing aesthetic impact to their riparian property. True and correct copies of the protest letters from NMFS, the USFS, DFG, James and Phylis Fisher, Konrad Fisher, and CSPA are available in the file for Application 29449 and separately offered into evidence as **Prosecution Team Exhibits WR-35, 36, 37, 38, 39, and 42**.
- c. NMFS and DFG both offered to dismiss their protests if the Diverter agreed to certain conditions. Both agencies requested minimum bypass flows. NMFS requested that the Diverter return tailwater discharges to Stanshaw Creek. NMFS and DFG asserted that maintaining sufficient flows in Stanshaw Creek are important for maintaining thermal refuge for salmonids and voiced concern that the Diverter's

activity would adversely impact that habitat. A true and correct copy of the letter from NMFS is available in the file for Application 29949 (WR-5, Bates stamp p. 595-597) offered into evidence separately as **Prosecution Team Exhibit WR-51**. A true and correct copy of the letter from DFG is available in the file for Application 29949 (WR-5, Bates stamp p. 592-594) and offered into evidence separately as **Prosecution Team Exhibit WR-52**.

- d. Permitting staff conducted an inspection July 26, 2000, stating “The penstock uses 200 feet of fall to turn a Pelton wheel turbine. The hydroelectric generator produces a maximum of 33.9 kilowatts of electricity at 80% turbine efficiency.” A true and correct copy of the field report is available in the file for Application 29449 (WR-4, Bates stamp p. 189-193) and offered into evidence separately as **Prosecution Team Exhibit WR-40**.
- e. Although the POD and diversion ditch are located on USFS land, the Diverter was not required to obtain a Special Use Permit (SUP) from the USFS for the ditch and POD, because the ditch pre-dated the establishment of the national forest.
- f. By letter dated March 30, 2012, the Division informed the Diverter that NFMS and DFG had both requested that any permit issued pursuant to Application 29449 include a minimum bypass flow. The Diverter had agreed to alter the diversion system to return flows back to Stanshaw Creek, but only if grant funding would cover the costs. The Diverter did not secure grant funding and further indicated he would not otherwise fund measures identified as necessary. The Division therefore lacked information necessary to support a finding that the application met the requirements of Water Code section 1275, subdivision (b), which states that the State Water Board may request information “needed to comply, or demonstrate compliance with, any applicable requirements of the Fish and Game Code or the federal Endangered Species Act of 1973.” The Division therefore informed the Diverter that the Division would cancel Application 29449 unless the Diverter provided a plan to supply the information necessary to comply with Water Code section 1275, subdivision (b). A true and correct copy of the letter is available in the file for Application 29449 (WR-5, Bates stamp p. 481-482) and separately offered into evidence as **Prosecution Team Exhibit WR-64**.

- g. In a letter dated May 29, 2012, the Diverter's legal counsel, in addition to requesting a four-month extension, stated that "it has become apparent that he holds a valid pre-1914 water right on which he can likely rely instead of pursuing this Application which was filed by his predecessor in interest." A true and correct copy of the letter is available in the file for Application 29449 (WR-5, Bates stamp p. 327-329) and separately offered into evidence as **Prosecution Team Exhibit WR-65**.
- h. The Division eventually cancelled Application 29449 with an order dated January 7, 2013. (WR-5, Bates stamp p. 457-458.) The basis for cancelling Application 29449 was the Diverters' assertion of a pre-1914 claim of right that negated the need for a water right permit. (WR-5, Bates stamp p. 466-467.) The Diverters' legal counsel, in a letter dated October 1, 2012, claimed the Division had no "jurisdiction" over the Diverters' pre-1914 claim of right and that the Diverters had the right to divert water from Stanshaw Creek for all their irrigation and domestic consumption as well as hydroelectric power production at a minimum of 3.6 cfs. A true and correct copy of the January 7, 2013 letter from the Division is offered into evidence as **Prosecution Team Exhibit WR-7**. A true and correct copy of the letter October 1, 2012 letter from the Diverter's legal counsel, which is also contained in the file for Application 29449 (*see* WR-5, Bates stamp p. 469-471) is offered into evidence separately as **Prosecution Team Exhibit WR-67**.
15. Application 29450 was filed November 21, 1994 by Caroline Cole for 0.11 cfs for irrigation of 7.0 acres and for the domestic uses associated with commercial operations at Marble Mountain Ranch. The conveyance facilities were the same as for Application 29449. The applicant eventually withdrew the application, which was cancelled July 6, 1999.
16. Small Domestic Use Registration 30945R ("D030945R") allows the Diverter to collect up to 10 acre-feet of water per annum from January 1 to December 31 of each year for domestic use. D030945R is offered into evidence as **Prosecution Team Exhibit WR-34**. No reports of registration have been filed for D030645R, even though an annual report is due by April 1 of the following year. Important terms in D030945R, as presently relevant, include the following –
- a. Term 10 – Pursuant to California Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this registration, including

method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

- b. D030945R is subject to prior rights. The Diverter may be required to curtail diversion if diverting water under the D030945R would result in injury to holders of legal downstream senior rights.
- c. Term 17 – In compliance with section 5937 of the Fish and Wildlife Code, if storage or diversion of water under this registration is by means of a dam, the Diverter shall allow sufficient water at all times to pass through a fishway or, in the absence of a fishway, allow sufficient water to pass over, around, or through the dam to keep in good condition any fish that may be planted or exist below the dam.
- d. Term 18 – The facilities for diversion under D030945R shall include satisfactory means of measuring and bypassing sufficient water to satisfy downstream prior rights and any requirements of the California Department of Fish and Wildlife (“DFW”).
- e. Term 19 – D030945R prohibits commencement of any construction and any diversion of water under the registration until all necessary federal, state, and local approvals have been obtained. In 2005, when processing the Diverter’s Report of Registrant to renew D030945, Division staff notified the Diverter that it had no record of DFG issuing clearance for D030945. A true and correct copy of the letter, dated August 5, 2005, offered into evidence as **Prosecution Team Exhibit WR-57**. In 2009, the Division notified DFG that it had never received written conditions for D030945R. A true and correct copy of the letter, dated September 3, 2009, is offered into evidence as **Prosecution Team Exhibit WR-58**. By letter dated October 15, 2009, DFG notified Division staff that it had never issued a clearance letter with terms and conditions for D030945R. A true and correct copy of the letter is offered into evidence as **Prosecution Team Exhibit WR-59**. The Diverter renewed D030945R in 2014. On the Report of Registrant, dated June 21, 2014, the box is checked for “Are you complying with all of the conditions of this registration?” is checked with the name “Douglas T Cole” on the signature line. A

true and correct copy of the renewal is offered into evidence as **Prosecution Team Exhibit WR-78**.

- f. Term 20 - D030945R does not authorize any act which results in the taking of a threatened or endangered species. If a "take" will result from any act authorized under D030945R, the Diverter shall obtain an incidental take permit prior to construction or operation. The Diverter is responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under D030945R.
 - g. Term 24 – D030945R is subject to enforcement, including and not limited to revocation, if, among other reasons, the Diverter violates D030945R's conditions.
17. The file for Application 29449 includes a Lake or Streambed Alteration (LSA) Agreement for D030945R, dated April 30, 1999. The LSA Agreement covered operation and repair of the diversion dam, but did not address the diversion of water itself. The LSA Agreement is a "Five Year Maintenance Agreement." The Division's files have no evidence that the LSA Agreement was renewed. The Division's files have no other LSA Agreement for the Diversifiers. A true and correct copy of the April 30, 1999 LSA Agreement is available in the file for Application 29449 (WR-5, Bates stamp p. 625-631) and offered into evidence separately as **Prosecution Team Exhibit WR-33**.
18. S015022 was filed with the State Water Board on December 1, 1998 under the name of Douglas T. Cole, for the following purpose of use: domestic, power, irrigation, fish and wildlife protection and/or enhancement, fire protection and stock watering. S015022 claims a diversion works capacity of up to 2.5 cfs, with a total montly diversion amount of 29.5 acre-feet. The total annual diversion amount reported at 354 acre-feet based on an average diversion rate of 0.49 cfs. S015022 claims no seasonal restrictions and is limited to such water as shall be reasonably required for beneficial use. The Diverter filed a Supplemental Statement of Diversion and use for S015022 for 2012. It does not appear that the Diverter filled out the Supplemental Statement and reported values for diversion and use correctly, because the values reported are inconsistent with the claimed use. S015022 and the supplemental statements of diversion are offered into evidence by reference, pursuant to California Code of Regulations, title 23, section 648.3, as **Prosecution Team Exhibit WR-32**. Annual supplemental statements for Statement S015022 for the years 2013 through 2016 has not been filed. The deadline for an annual supplement statement is July 1 of each

- year. On January 30, 2013 and February 19, 2016, the Division issued a notice letter informing the Diverter of the requirement to file annual supplemental statements online for Statement S015022, pursuant to Water Code section 5104, subdivision (a). A true and correct copy of the letter, dated January 30, 2013 and February 19, 2016 Statement filing notice letters are offered into evidence as, **Prosecution Team Exhibit WR-175 and WR-174**, respectively.
19. S016375 was filed with the State Water Board on May 28, 2010 for irrigation and domestic uses under the name of Marble Mountain Ranch. S016375 claims 3.0 cfs with no seasonal restrictions and is limited to such water as shall be reasonably required for beneficial use. S016375 claims a greater face value than S015022, even though it does not include hydropower as a beneficial use. The Diverter filed a Supplemental Statement of Diversion and Use for S016375 for the year 2012. Supplemental Statement of Diversion and Use for 2012 states a domestic purpose of use of “12-50 persons seasonally.” S016375 and the supplemental statements of diversion are offered into evidence by reference, pursuant to California Code of Regulations, title 23, section 648.3, as **Prosecution Team Exhibit WR-61**. Annual supplemental statements for Statement S016375 for the years 2014 through 2016 have not been filed. The deadline for an annual supplement statement is July 1 of each year. On January 30, 2013, August 1, 2014 and on February 19, 2016, the Division issued a notice letter informing the Diverter of the requirement to file annual supplemental statements online for Statement S016375, pursuant to Water Code section 5104, subdivision (a). A true and correct copy of the letter, dated January 30, 2013, August 1, 2014 and February 19, 2016 Statement filing notice letters are offered into evidence as, **Prosecution Team Exhibit WR-175, and WR-176, and WR-174**, respectively.
20. The Diverter is subject to the measurement and monitoring requirements pursuant to California Code of Regulations section 932, which requires the Diverter to install and maintain a measuring device or employ a measurement method capable of measuring the rate of diversion, rate of collection to storage, the rate of withdrawal or release from storage, and the total volume of water diverted or collected to storage. The Diverter is required to install a measurement device capable of hourly data recording on or before January 1, 2017 with a right or claimed right to diverted 1,000 acre-feet of water per year or more. The Diverter’s supplemental statement S016375 reported a total diversion amount of approximately 2,039 acre-feet per year in 2010 – 2013. The Diverter’s measurement device

- shall be capable of recording the date, time, and at least one of the following: total volume of water diverted, flow rate, water velocity, or water elevation. The Division has not received a request for additional time to install a measurement device nor has the Diverter submitted an alternative compliance plan for a measuring device or measurement method.
21. In 2002, Division Enforcement Staff completed an investigation conducted in response to a complaint filed against the Diverter by the Klamath Forest Alliance. Division staff recommended that the Diverter cease all diversions of water, whether pursuant to a pre-1914 appropriative right or an appropriative right derived from Application 29449 or Small Domestic Registration D030945R, unless the Diverter bypassed sufficient flow below the POD to maintain adequate flow in lower Stanshaw Creek. During the inspection, Division staff observed that the Diverter was diverting approximately 0.6 cfs, an amount insufficient to operate the pelton wheel. Although Division Enforcement Staff believed 0.7 cfs would be sufficient to maintain adequate temperatures in the thermal refuge at the mouth of Stanshaw Creek, NMFS disagreed, because the determination was based on a single measurement during a single site visit in the month of October. A true and correct copy of the complaint from the Klamath Forest Alliance is available in the Complaints and Investigation file (WR-6, Bates stamp p. 760-762) and offered into evidence separately as **Prosecution Team Exhibit WR-48**. A true and correct copy of the Inspection Report is available in the file for Complaints and Investigation file (WR-6, Bates stamp p. 763-776) and offered into evidence separately as **Prosecution Team Exhibit WR-53**. A true and correct copy of the letter from NMFS, dated July 8, 2002, is available in the Complaints and Investigation file (WR-6, Bates stamp p. 757-758) offered into evidence separately as **Prosecution Team Exhibit WR-54**. A true and correct copy of the letter closing out the investigation, dated August 22, 2002, is available in the Complaints and Investigation file (WR-6, Bates stamp p. 706-708) offered into evidence separately as **Prosecution Team WR-55**.
22. On September 1, 2014, Lennihan Law, P.C., at the request of the Mid Klamath Watershed Council and in collaboration with the Mid Klamath Watershed Council and Cascade Stream Solutions, released the Marble Mountain Ranch Stanshaw Creek Water Rights Report (“Lennihan Report”). The Lennihan Report was prepared in association with an ongoing stakeholder processes involving the MMR diversion. The Lennihan Report included the Diverters’ water right files and information the Diverter provided. NMFS and the Diverter’s

- legal counsel both provided comments on a draft that were considered for the final report. The Lennihan Report reviewed MMR's chain of title, historical water use, and other information. The Lennihan Report provides a summary of the past and present water use of the Diverter and of the Diverter's predecessors in interest. The Lennihan Report determined that, although the Diverter likely lacked a riparian water right, "the likely pre-1914 appropriative water right that can be exercised on Coles' Marble Mountain Ranch is approximately 1.16 cfs, with varying seasons of use." Insofar as the Diverter's predecessor in interest had once claimed a much larger right, the Lennihan Report found that little of this right had been put to continuous beneficial use and had therefore been lost due to forfeiture. A true and correct copy of the Lennihan Report is offered into evidence as **Prosecution Team Exhibit WR-80**. True and correct copies of the supporting documents the Lennihan Report used are offered into evidence as **Prosecution Team Exhibit WR-200**. The Division's file for Application 29449 and the Complaint and Investigation file for Stanshaw Creek have been offered into evidence separately and, due to the size of these records have not been submitted again with WR-80.
23. On November 18, 2014, the Mid Klamath Watershed Council and Cascade Stream Solutions released the Marble Mountain Ranch Water Right Investigation: Water Use Technical Memorandum ("Water Use Technical Memorandum"), prepared in conjunction with the Lennihan Report. The Water Use Technical Memorandum assessed the Diverter's historical beneficial use of water. It determined that the Diverter puts approximate 0.353 cfs to consumptive beneficial use. However, with regard to the manner in which the Diverter regulates the water diverted relative to demand, it states:

A channel spanning gravel and cobble push-up dam diverts water that does not seep through the dam into a diversion ditch. The amount diverted typically varies with available stream flow independent of demand. Under typical late spring, summer, and fall flow conditions (less than about 3 to 4 cfs), the majority of creek flow is diverted into the ditch.

With regard to current water use, the Water Use Technical Memorandum states:

Water is diverted continuously throughout the year at the maximum rate possible up to about 3 to 4 cfs. MMR will stop diverting on rare occasions when extreme flows are in Stanshaw Creek and diversion flows risk damaging the ditch. During these rare events, the head of the diversion is blocked to prevent flow from entering the ditch. Water demand is greatest during the summer as it is used to generate power, irrigate, and provide domestic water. Summer power demand is estimated by Mr. Douglas Cole to be 35 to 40 kW, with peak power demands in the mid-afternoon when guests return from ranch activities. Actual power production and usage are not measured by MMR. Mr. Douglas Cole states that

power and water needs are met when the volume of water diverted from Stanshaw Creek (including carriage losses) is about 3 cfs.

A true and correct copy of the Water Use Technical Memorandum is offered into evidence as **Prosecution Team Exhibit WR-82**.

24. On November 21, 2014, I received an e-mail from Craig Tucker, who had in turn forwarded an email from Will Harling, Executive Director for the Mid Klamath Watershed Council. According to Mr. Harling's e-mail, "The landowners are willing to move forward with the development of physical solutions based on the 1.16 cfs figure referenced in Martha Lennihan's report." A true and correct copy of the e-mail is offered into evidence as **Prosecution Team Exhibit WR-81**.
25. On December 17, 2014, Skyler Anderson and I met with Mr. Cole for a facility tour to observe the diversion facility, diversion facility operation, conveyance system, place of use and water discharge to Irving Creek, a tributary to the Klamath River located approximately one-mile downstream of the Stanshaw Creek and Klamath River confluence. After the MMR facility tour, Division Enforcement Staff attended a Stanshaw Creek Water Conservation stakeholders meeting in Orleans, California. Stakeholders included DFW, NMFS, USFS, Mid Klamath Watershed Council, Karuk Tribe representatives, Mr. Cole, and Fisher. The meeting provided a forum for stakeholders to ask questions and share opinions regarding the Lennihan Report and to solicit discussion about a physical solution and the potential process for obtaining public funding assistance for a physical solution project. A true and correct copy of the meeting notes is offered into evidence as **Prosecution Team Exhibit WR-83**.
26. Enforcement staff from the Division and the North Coast Regional Water Quality Control Board ("Regional Water Board") conducted a joint site inspection of MMR on February 12, 2015. The Division requested assistance from Regional Water Board Enforcement Staff in order to evaluate potential water quality violations. The Division and Regional Water Board have since coordinated their investigations and enforcement efforts with respect to the Diverter in order to most effectively use their respective enforcement authorities to fully address water quality violations, misuse of water, and public trust impacts.
27. On December 3, 2015, Division and Regional Water Board enforcement staff issued a joint letter ("December 3, 2015 Letter") to the Diverter. The December 3, 2015 Letter included a notice of violation ("NOV"), draft cleanup and abatement order ("Draft CAO"), and report

- of inspection (“ROI”) from the Regional Water Board describing water quality violations and prescribing corrective actions. The December 3, 2015 Letter also included a ROI from the State Water Board identifying unreasonable methods of use and unreasonable methods of diversion resulting in waste and public trust violations. The State Water Board report of inspection also prescribed corrective actions. The letter stated that the Regional Water Board and the State Water Board had completed their investigations and would pursue formal enforcement action if the Diverter failed to respond to the letter in 30 days to discuss a response that would substantially address the concerns outlined in the Regional Water Board’s Draft CAO and the State Water Board report of inspection. A true and correct copy of the December 3, 2015 Letter is offered into evidence as **Prosecution Team Exhibit WR-105**. A true and correct copy of the Division Report of Inspection (ROI) is offered into evidence as **Prosecution Team Exhibit WR-87**. A true and correct copy of the Regional Water Board’s NOV is offered into evidence as **Prosecution Team Exhibit WR-88**. A true and correct copy of the Regional Water Board ROI is offered into evidence as **Prosecution Team Exhibit WR-89**. A true and correct copy of the Regional Water Board’s Draft CAO is offered into evidence as **Prosecution Team Exhibit WR-106**.
28. The Diverter’s legal counsel responded to the Lennihan Report with a letter dated January 12, 2015. The Diverter’s legal counsel disagreed with the legal analysis and legal conclusions in the Lennihan Report, but indicated no disagreement with facts cited in the report, such the rate and quantity of the current and historical water use at Marble Mountain Ranch. A true and correct copy of the letter is offered into evidence as **Prosecution Team Exhibit WR-86**.
29. On January 14, 2016, Division and Regional Board Enforcement Staff met with Mr. Cole and various other stakeholders in Orleans, California. Margaret Tauzer from NMFS presented instream flow recommendations. The attendees also discussed the Regional Water Board and State Water Board inspection reports and recommended corrective actions. At the meeting Mr. Cole indicated that he had yet to institute any changes in his POD or methods of measuring his diversion and bypass flows. A true and correct copy of the meeting notes is offered into evidence as **Prosecution Team Exhibit WR-109**.
30. Following the January 14, 2016 meeting in Orleans, the Division requested technical assistance from NMFS and DFW to develop bypass flow recommendations for Stanshaw Creek.

31. Authentication of Exhibits from the Enforcement File: I have reviewed the enforcement and permit file for this matter. The Prosecution Team Exhibits contain true and correct copies of the following from the Enforcement file:

1. Prosecution Team Exhibit WR-27
2. Prosecution Team Exhibit WR-28
3. Prosecution Team Exhibit WR-30
4. Prosecution Team Exhibit WR-49
5. Prosecution Team Exhibit WR-56
6. Prosecution Team Exhibit WR-60
7. Prosecution Team Exhibit WR-66
8. Prosecution Team Exhibit WR-69
9. Prosecution Team Exhibit WR-68
10. Prosecution Team Exhibit WR-77
11. Prosecution Team Exhibit WR-79
12. Prosecution Team Exhibit WR-91
13. Prosecution Team Exhibit WR-92
14. Prosecution Team Exhibit WR-94
15. Prosecution Team Exhibit WR-98
16. Prosecution Team Exhibit WR-99
17. Prosecution Team Exhibit WR-100
18. Prosecution Team Exhibit WR-104
19. Prosecution Team Exhibit WR-107
20. Prosecution Team Exhibit WR-111
21. Prosecution Team Exhibit WR-114
22. Prosecution Team Exhibit WR-128
23. Prosecution Team Exhibit WR-134
24. Prosecution Team Exhibit WR-136
25. Prosecution Team Exhibit WR-137
26. Prosecution Team Exhibit WR-138
27. Prosecution Team Exhibit WR-139
28. Prosecution Team Exhibit WR-153
29. Prosecution Team Exhibit WR-178

30. Prosecution Team Exhibit WR-179

31. Prosecution Team Exhibit WR-180

32. Prosecution Team Exhibit WR-181

33. Prosecution Team Exhibit WR-182

I declare under penalty of perjury to the laws of the State of California that the foregoing is true and correct. Executed September 28, 2017, at Sacramento, California.


TARO MURANO

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