

Section. My statement of qualifications is offered into evidence as **Prosecution Team Exhibit WR-10**.

3. I acted as staff lead in this investigation and enforcement action, under the direction of my senior Mr. Taro Murano.
4. Marble Mountain Ranch (“MMR”) is located at 92520, Highway 96 in Somes Bar, Siskiyou County. Marble Mountain Ranch 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. The large parcel containing the majority of MMR is owned by Norman D. Cole and Carolyn T. Cole. The parcel immediately downstream and downslope from MMR is owned by Konrad Fisher (Fisher).
5. On July 17, 2013 the State Water Board received a complaint alleging that the Diverter was dewatering Stanshaw Creek, and that Stanshaw Creek was being dewatered in most summers as a result, causing impacts to public trust resources.
6. On January 29, 2014, Division Enforcement Staff working in my unit received video created by the downstream landowner Konrad Fisher documenting the Stanshaw Creek diversion, portions of the MMR diversion ditch, and Stanshaw Creek’s confluence with the Klamath River. The video depicts the MMR diversion diverting nearly the entire flow of Stanshaw Creek. The voice in the video is identifiable as Konrad Fisher. The video indicates it was created in January 2014. A true and correct copy of the correspondence receiving the video is offered into evidence as **Prosecution Team Exhibit WR-76**. A true and correct copy of the video is offered into evidence as **Prosecution Team Exhibit WR-75**.
7. 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 process involving the MMR diversion. Division Enforcement Staff, Department of Fish & Wildlife (DFW), United States Forest Service (USFS), the Klamath Forest Alliance, Fisher, and the Diverter all provided information for the report. NMFS, Fisher, and the Diverter’s legal counsel 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**. Supporting documents for the Lennihan Report have been included except for the Division file for Application 29449 and the Complaint and Investigation file for Stanshaw Creek, both of which have been offered into evidence separately and, due to the size of these records have not been submitted again with the Lennihan Report.
8. 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 principal for Cascade Stream Solutions is Joey Howard (Howard), a licensed professional engineer. The Water Use Technical Memorandum assessed the Diverter's historical beneficial use of water. Among other observations, it noted that MMR diverts water independent of demand and that diversion flows are not reduced when hydropower generation ceases. It estimated transmission losses in the ditch at 0.4 cfs. It also determined that the Diverter puts approximately 0.353 cfs to consumptive beneficial use and uses the remaining water diverted for hydropower generation. A true and correct copy of the Water Use Technical Memorandum is offered into evidence as **Prosecution Team Exhibit WR-82**.
 9. On December 17, 2014, Mr. Murano and I met with Mr. Cole for a facility tour to document 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,

- 1 and Fisher. During the meeting, stakeholders asked questions and shared opinions regarding
2 the Lennihan Report to solicit discussion about a physical solution and a potential process
3 for obtaining public funding assistance for a physical solution project. I received a copy of
4 the meeting minutes from Will Harling (Harling), Executive Director for the Mid-Klamath
5 Watershed Council (MKWC). A true and correct copy of the attendance sheet and the notes
6 documenting the meeting are offered into evidence as **Prosecution Team Exhibit WR-83**.
7 A true and correct copy of correspondence from Harling sending me the meeting notes is
8 offered into evidence as **Prosecution Team Exhibit WR-90**.
10. During the December 17, 2014 Stanshaw Creek Water Conservation stakeholder meeting in
9 Orleans, California, Bob Pagliuco of the National Oceanic Atmospheric Administration
10 (NOAA) indicated that fish kills had occurred in Stanshaw Creek. After the meeting, I
11 followed up with Mr. Pagliuco by e-mail. Mr. Pagliuco suggested I contact Margaret
12 Tauzer, also from NOAA, and Toz Soto, the Fisheries Program Coordinator for the Karuk
13 Department of Natural Resources. I subsequently contacted Mr. Soto, who claimed he
14 witnessed and documented a fish kill in Stanshaw Creek. In subsequent correspondence
15 with Mr. Soto, he provided photographic evidence of a fish kill, in addition to substantial
16 data documents flow, temperature, and other conditions in Stanshaw Creek. True and
17 correct copies of the correspondence is offered into evidence as
- 18 1. Prosecution Team Exhibit WR-83;
 - 19 2. Prosecution Team Exhibit WR-85;
 - 20 3. Prosecution Team Exhibit WR-93;
 - 21 4. Prosecution Team Exhibit WR-95;
 - 22 5. Prosecution Team Exhibit WR-96;
 - 23 6. Prosecution Team Exhibit WR-97;
 - 24 7. Prosecution Team Exhibit WR-103; and
 - 25 8. Prosecution Team Exhibit WR-148.
- 26 11. Following the December 17, 2014 stakeholder meeting in Orleans, I corresponded with
27 NMFS and DFW to obtain additional information from each agency regarding their flow
28 recommendations for Stanshaw Creek. I wanted to better understand the differences
between the two recommendations and see if any refinements were necessary. A true and
correct copy of the correspondence I received is offered into evidence as

1. Prosecution Team Exhibit WR-84;
 2. Prosecution Team Exhibit WR-104; and
 3. Prosecution Team Exhibit WR-105.
12. I conducted a subsequent inspection at MMR with Michael Vella from the Division and Stormer Feiler from the North Coast Regional Water Quality Control Board (“Regional Water Board”) on February 12, 2015.
 13. The MMR point-of-diversion (“POD”) is located on Stanshaw Creek, approximately three-quarters of a mile upstream of the Highway 96 crossing, on land owned by the United States Forest Service (“USFS”).
 14. The Diverter’s POD consists of a handmade rock wing diversion dam located on the south creek bank of the Stanshaw Creek channel. The rock wing diversion dam extends about halfway across the channel.
 15. The POD lacks a permanent control structure to regulate the amount of water diverted from Stanshaw Creek. The POD also requires regular maintenance. The Diverter currently regulates the amount of water diverted from Stanshaw Creek by manually rearranging the hand-stacked rocks on the diversion dam.
 16. The POD lacks devices to measure bypassed flow.
 17. Water is gravity diverted at the POD and conveyed approximately one half-mile in a partially lined and partially unlined diversion ditch to an inlet where water is routed to a water treatment facility via a 2-inch PVC pipe and then through a penstock for hydroelectric power generation. Shortly before the penstock, the pipeline splits and diverts some water to irrigation.
 18. MMR has two outfall structures along the diversion ditch downstream from the POD to relieve excess amounts of water that would otherwise overflow the diversion ditch during periods of high flow in Stanshaw Creek. The first of two outfall structures is located approximately 50-feet downstream of the POD. The first outfall structure operates in a similar manner as the POD and requires regular augmentation of flash board risers and rocks in the diversion ditch to manipulate the amount of water conveyed by the diversion ditch. The second outfall structure is located approximately 300-feet downstream of the POD and occurs just before the diversion ditch narrows from approximately 60 inches in width to approximately 30 inches in width. Flash boards are used in the second outflow structure to manipulate the amount of excess water discharged from the diversion ditch.

- Water from the second outfall structure is discharged via a “shotgunned” culvert into a small unnamed tributary to Stanshaw Creek, then to Stanshaw Creek. The culvert appeared to have caused a large erosion feature in the downslope channel. The two outfall structures spill excess flows well before any water is put to beneficial use. A “shotgunned” culvert extends out and above a channel, similar to a gun barrel. This essentially creates a waterfall effect when water discharges through the culvert. Ideally, a culvert should discharge water at the same grade as a channel, but “shotgunned” culverts tend to cause more erosion, because the energy of the water falling out of the culvert erodes soil more rapidly.
19. The diversion ditch is located on a steep heavily treed hill slope. The diversion ditch resembles a narrow road cut on a steep hillside. The diversion ditch requires regular maintenance due to sediment deposition, cut bank slumps and landslides. According to the Cascade Water Use Technical Memorandum, changes in the elevation of the outboard canal berm may change as a result of erosion due to overtopping and slumping and sloughing of the hill slope. Slope loading occurs during heavy rainfall events which increase the mass of materials up-slope, resulting in slumps into the ditch. During the December 17, 2014 facility tour and inspection we observed that there is limited free board space along the majority of the diversion ditch. The elevation of the outer berm crest of the diversion ditch varies greatly.
 20. The water treatment plant receives water from the MMR diversion ditch via a 2-inch diameter PVC pipe. The inlet for the 2-inch PVC pipe is located in the MMR diversion canal approximately 100 feet upstream from the penstock. Water diverted by the 2-inch PVC pipe was routed via gravity to five 3,000 gallon plastic water storage containers that MMR uses for water treatment (“Water Treatment Tanks”). Water conveyed to the water storage containers are MMR’s domestic water supply that serves residents living on the property and guests staying at MMR. Numerous leaks were observed in the tanks. Mr. Cole has indicated that he has since replaced the Water Treatment Tanks with new tanks and added additional tanks.
 21. The diversion ditch conveyance system continues below the Water Treatment Tanks and conveys water to a 14-inch diameter penstock pipe. Water that is conveyed through the penstock is used for hydropower and connects to MMR’s irrigation system. The power generation facility consists of an 18-inch Pelton wheel that is powered by two pressurized

- jets. Water flowing through the hydropower facility discharges into a diversion ditch that flows to a pond. The pond serves as a recreational feature and provides fire protection.
22. Irrigation flows are conveyed through a short length of nine-inch diameter steel pipe to a four-inch diameter PVC pipe that extends from the junction at the power plant to sprinklers located in the pastures and hose bibs located throughout the property. Approximately seven acres of garden and pasture land are irrigated. Irrigation was not occurring at the time of inspection.
 23. Water discharged from the hydropower facility is not re-used for irrigation or domestic needs, but rather flows into a ditch below the pond and continues across the property for approximately 850 feet to the south before water drops off a head cut to a ravine and into a tributary to Irving Creek. On February 12, 2015, I calculated that approximately 1.23 cfs was flowing through the hydropower facility and discharging into Irving Creek. Irving Creek is a tributary to the Klamath River located approximately one-mile downstream of the Stanshaw Creek and Klamath River confluence.
 24. During the February 12, 2015 inspection I took three flow measurements at three locations within MMR's diversion ditch: 1) in the diversion ditch approximately 50-feet below the POD on Stanshaw Creek and below the first outfall structure; 2) in the diversion ditch approximately 100-feet downstream of the 2-inch domestic water line intake; and 3) in the diversion ditch below the recreational pond and before flow is discharged to Irving Creek. I visually estimated the ditch capacity is approximately 3 to 4 cfs. Flow data and latitude and longitude coordinates for the data collections are summarized in Table 1 of the Draft Order and on page 12 of the ROI.
 - a. Measurement location # 1 was located within MMR's diversion ditch just below the POD on Stanshaw Creek. I recorded a flow rate of 2.23 cfs.
 - b. Measurement location # 2 was located within the diversion ditch 100-feet downstream of the 2-inch domestic water line intake and approximately 50-feet upstream of the terminus into the penstock. I recorded a flow of 1.63 cfs at Measurement location # 2. I calculated a ditch loss of approximately 0.6 cfs by subtracting the flow taken at Measurement location # 2 from Measurement location # 1.
 - c. Measurement location #3 was located in the diversion ditch and just below the pond. I measured the flow at Measurement location # 3 at 1.23 cfs.

- d. I recorded the flow at Measurement location #3 to determine the Diverter's consumptive water demand for domestic and irrigation uses. I calculated that the Diverter's domestic and irrigation water demand was 0.4 cfs by subtracting Measurement location # 2 from Measurement location # 3.
 - e. Based on my flow measurements in the ditch on February 12, 2015, I calculated that approximately twenty-seven percent of water diverted at the Stanshaw Creek POD is lost in the conveyance system and sixteen percent of water diverted is consumptively used. Fifty-six percent of the water diverted is used non-consumptively for hydroelectric power generation and discharged to Irving Creek.
25. On February 13, 2015 Division Enforcement Staff received photographic evidence from the Karuk Tribe Department of Natural Resources of a Coho salmon and five juvenile steelhead fish kill found in a Coho rearing pond located off channel near the confluence of Stanshaw Creek and the Klamath River in late July 2009. The Karuk Tribe claimed the fish mortality was due to a lack of flow entering the pond that led to a water temperature increase when Stanshaw Creek flows were reduced by MMR's diversion. A true and correct copy of correspondence documenting the complaint, which includes photos of dead fish, is offered into evidence as **Prosecution Team Exhibit WR-96**.
26. Mr. Cole has stated that rearranging the rocks of the diversion dam to regulate the diversion on a daily basis would be impractical. This is consistent with my observation of MMR's diversion works.
27. Without an adequate control mechanism to regulate the diversion, during low flow periods the Diverter may divert more water than necessary for consumptive use.
28. The Pelton wheel requires a minimum amount of flow to generate electricity. As a result, the Diverter may divert more than necessary for consumptive use, but not enough to operate the Pelton wheel. In such a circumstance, water diverted in excess of consumptive use requirements would discharge into Irving Creek without being put to any beneficial use. Mr. Cole has acknowledged operating MMR's diversion in such a manner.
29. The Diverter relies on a diesel generator to generate electricity when insufficient flow is diverted from Stanshaw Creek to operate the Pelton wheel.
30. According to the Diverter, diverting 3 cfs is necessary to operate the Pelton wheel to meet peak electrical demands. This would occur in the summer, when MMR claims it may host up to 50 people at a time or when it may host a fire crew. However, according to the

- Supplemental Statement of Diversion and Use, as few as 12 people may occupy MMR at other times. If the Diverter does not regulate the rate of diversion, this would result in excess and unnecessary power generation.
31. During high flows in Stanshaw Creek water may be diverted in excess of the diversion ditch capacity, causing water to overtop the diversion ditch and results in slumps and landslides. In addition, the continuous deposition of sediment from Stanshaw Creek in the ditch reduces the ditch capacity and increases the risk of water overtopping the low berm areas. Similarly, when material from the up-slope cut bank slumps into the ditch, it can result in partially damming or completely damming the ditch and diverting stream flow out of the ditch and downhill.
 32. In the course of my inspections, I have not identified any equipment capable of measuring the diversion of water consistent with requirements of the regulations for diversion measurement and monitoring contained in Chapter 2.8, title 23, of the Code of Regulations. The Diverter claims a right to divert up to 3 cfs – a daily diversion that totals more than 2,000 acre-feet per year. Based on the Diverter’s claimed right, the Diverter should have installed a measuring device capable of measuring the diversion at least as frequent as every hour. The regulations require that the Diverter had a compliant measurement method by January 1, 2017. To my knowledge, the Diverter has not indicated having such a method.
 33. In the course of my inspections, I have not identified any equipment capable of measuring flows in Stanshaw Creek near the Diverter’s point of diversion.
 34. I researched the watershed to identify other water rights. In the course of my investigation, I identified one water user upstream of the Diverter and one water user downstream.
 - a. My research included searching EWRIMS to identify diverters in the Stanshaw Creek watershed. I then interviewed the diverters I identified.
 - b. The upstream diverter is Mountain Home, held under Steve Robinson. Mountain Home holds Permit 20955 (“Application 25446”). Permit 20955 has a priority date of August 3, 1977 and entitles Mountain Home to divert up to 1,200 gallons per day for domestic use year-round and up to 0.14 cfs from April 1 through August 30 of each year for irrigation from Sandy Bar Creek, a tributary to the Klamath River and from two unnamed streams tributary to Stanshaw Creek and thence the Klamath River. The maximum amount diverted under the permit annually shall not exceed 60 acre-feet per annum. Although Mountain Home has not filed a statement of

diversion and use asserting a riparian claim of right, Mountain Home's property appears to be riparian to Stanshaw Creek.

- c. I visited Mountain home on April 5, 2016. I interviewed the owner, Mr. Steve Robinson, and inspected the diversion facilities. I observed that Mountain Home uses a Harris Wheel to generate hydropower. Mountain Home diverts water approximately twenty feet from the Harris Wheel out of an unnamed tributary to Stanshaw Creek. Once water has been routed through the Harris Wheel it is returned to the stream of origin. Mountain Home supplements its hydropower system with a system of batteries charged with electricity generated by the Harris Wheel. I also observed the presence of solar panels. A true and correct copy of my Report of Inspection is offered into evidence as **Prosecution Team Exhibit WR-119**. A true and correct copy of the photo log accompanying the Report of Inspection is offered into evidence as **Prosecution Team Exhibit WR-118**.
- d. Mountain Home's progress reports indicate that 2.99 acre-feet of water is diverted annually. Although more water is used in the summer, 2.99 acre-feet equates to an annual average flow rate of 0.0041 cfs. After discussion with NMFS, we determined that Mountain Home's diversion is too small to create a measurable difference in stream flow or to have any significant impact on public trust beneficial uses and conditions at the Diverter's POD. A true and correct copy of Permit 20955 and the associated progress reports of permittee is offered into evidence by reference, pursuant to California Code of Regulations, title 23, section 648.3, as **Prosecution Team Exhibit WR-19**.
- e. The downstream diverter is Fisher. Fisher diverts water from Stanshaw Creek under riparian claim of right, held under the name of J W Fisher Logging, in Statement S015230 for irrigating 1.6 acres of lawn and garden and for household use for up to 24 persons. Fisher owns 43 acres of land downstream and downslope from Marble Mountain Ranch that was also a portion of E. Stanshaw's larger patented parcel. In addition to researching records of the State Water Board, I have interviewed Fisher on multiple occasions. Fisher has alleged that he and the Diverter are both successors in interest to E. Stanshaw. As an alleged successor in interest, Fisher further alleges that he is also a successor in interest to the Stanshaw pre-1914 appropriation. A true and correct copy of Statement S015230 is offered into

evidence by reference, pursuant to California Code of Regulations, title 23, section 648.3, as **Prosecution Team Exhibit WR-41**.

- f. Based on consultation with NMFS and discussions with Mr. Fisher regarding his water use, we determined that Fisher's diversion is too small to create a measurable difference in stream flow or to have any significant impact on flows and public trust beneficial uses in Stanshaw Creek.
35. On February 17, 2015, I received an email from Will Harling with an attached report to the DFW on a project implemented by MKWC – the Stanshaw Creek Coho Habitat Enhancement Project. According to the report, the project successfully restored approximately 4,500 square feet of high quality coho rearing habitat at the mouth of Stanshaw Creek. The project removed approximately 560 cubic yards of gravel and rock were removed from the head of an existing pool, restoring and enhancing the pre-2006 form and function of this heavily utilized off-channel rearing habitat. Originating from Stanshaw Creek, the bulk of the sediment plug was deposited during the 2005/2006 flood event when the upstream ditch diversion to Marble Mountain Ranch overtopped causing severe gully erosion. A true and correct copy of the email, with the report attached, is offered into evidence as **Prosecution Team Exhibit WR-184**.
36. On March 18, 2015, Howard informed me that on August 27, 2013 the Diverter used diesel generators to provide MMR with electrical power, because there was insufficient flow in the diversion ditch to operate the hydro-power system and provide irrigation and domestic water for MMR. Howard further indicated that excess diverted water was leaving the MMR pond and flowing toward Irving Creek. Howard further stated that he measured flow velocity during this instance and recorded the flow at 1 cfs.
37. In March and April of 2015, I corresponded with NMFS and DFW to determine whether they still supported their original flow recommendations for MMR and Stanshaw Creek for Diverter's Application 29449. To dismiss its protest, NMFS recommended a bypass flow of 1.5 cfs measured below the MMR POD. To dismiss its protest, DFG recommended a flow of 2.5 cfs measured at the culverts below Highway 96. In making its recommendation, NMFS assumed the Diverter would return water diverted and not put to consumptive use back to Stanshaw Creek. DFG assumed the Diverter would not return water diverted and not put to consumptive use back to Stanshaw Creek. True and correct copies of that email

correspondence are offered into evidence as **Prosecution Team Exhibits WR-101 and WR-102.**

38. 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 Staff Inspection Report from the Regional Water Board describing water quality violations and prescribing corrective actions. The December 3, 2015 Letter also included a Report of Inspection (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 ROI 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 ROI. 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 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 Staff Inspection Report 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.**
39. The Division ROI evaluated the Diverter’s diversion and use of water based on site inspections, the Lennihan Report, and the Water Use Technical Memorandum. The ROI evaluated the Diverter’s pre-1914 water right claim.
- a. The scope of the pre-1914 appropriative right available to MMR has been the subject of much contention, and at least two prior Division investigations.
 - b. In a letter dated September 15, 1998, the Division concluded that the upper limit of the pre-1914 right available to the Diverter was 0.49 cfs and could be as low as 0.11 cfs. The file for Application 29449 includes a true and correct copy of the September 15, 1998 letter (*see* WR-4, Bates stamp p. 401-403) and is offered into evidence separately as **Prosecution Team Exhibit WR-31.** This assertion is based upon information contained in the May, 1965 bulletin by the Department of Water

Resources entitled "Land and Water Use in the Klamath River Hydrographic Unit" (Bulletin No. 94-6). This publication lists the Marble Mountain Ranch property and states that the total amount of water diverted for irrigation, domestic, stockwatering, and power production totaled 362 acre-feet annually. The letter goes on to state that this total usage equates to a continuous flow rate of approximately 0.5 cfs and that this information was verified by Mr. Marvin Goss, a Forest Service Hydrologist, who lived on the Diverter's property while it was under prior ownership. Mr. Goss evaluated the flow capacity of the ditch, measured the actual amount of water put to use generating power, and found that water had been used at a rate of 0.49 cfs for many years. Mr. Goss determined the flow capacity of the ditch was 1.25 cfs, limited by a low point in the ditch. Although Division staff accepted that the Diverter was the successor in interest to Mr. Stanshaw's original claim of 600 miner's inches (15 cfs), available information indicated that no more than 0.49 cfs had been put to continuous, reasonable, and beneficial use. A true and correct copy of Bulletin No. 94-6, volume I is offered into evidence as **Prosecution Team Exhibit WR-17**. A true and correct copy of Bulletin No. 94-6, volume II is offered into evidence as **Prosecution Team Exhibit WR-18**.

- c. Statement of Diversion S015022 claims a diversion works capacity of up to 2.5 cfs, but a total annual amount of 354 acre-feet based on an average diversion rate of 0.49 cfs. This matches the diversion rate observed in DWR Bulletin 94-6.
- d. In 2002, following a more detailed investigation, including a review of evidence submitted by the Diverter's legal counsel, the Division concluded that a court of competent jurisdiction would most likely confirm that the Diverter has a valid pre-1914 appropriative right for the full domestic and irrigation purposes at Marble Mountain Ranch, although there was no evidence to substantiate a pre-1914 appropriative right for power generation. (*see* WR-5, Bates stamp p. 574-575, 590) Although the original Pelton wheel dated from the early 1900's, Complaint Unit staff believed the initial application of water for power purposes did not occur until shortly after the end of World War II. (*see* WR-5, Bates stamp p. 582) A true and correct copy of the letter to the complainant and to the Diverter, which includes the investigation report as an attachment, is available in the file for Application 299449 and offered into evidence separately as **Prosecution Team Exhibit WR-53**.

- e. In light of the then-recent decision *Millview County Water District v. State Water Resources Control Board* (2014) 229 Cal.App.4th 879, and the lack of evidence indicating any contesting claims, the ROI stated “the MMR pre-1914 water right may be up to the full capacity of the ditch, which MMR claims to be 3 cfs.” However, this was a potential maximum for the Diverter’s pre-1914 water right. The Division ROI also determined that the Diverter’s diversion and use of water could constitute a waste and unreasonable use of water and unreasonable and impact public trust resources. As corrective actions, the Division report of inspection recommended that the Diverter: (1) install a water diversion control mechanism at the POD; (2) return diverted water to Stanshaw Creek that is not put to beneficial use or put to non-consumptive use; (3) fix all leaks associated with the water treatment system; (4) prevent unnecessary conveyance losses in the conveyance ditch by piping or lining the ditch or by other measures; (5) implement the NMFS and DFW bypass flows and cease impacting public trust resources and habitat; and (6) consult with DFW to determine whether a fish screen should be installed.
40. On January 14, 2016, Division and Regional Water 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**.
41. Following the January 14, 2016 meeting in Orleans, I operated as the primary contact with NMFS to further refine the bypass flow recommendation for MMR and Stanshaw Creek. True and correct copies of e-mail correspondence are offered into evidence as **Prosecution Team Exhibits WR-113, 116, WR-121, WR-130, WR-131, and WR-133**.
42. On January 19, 2016, the Diverter, through legal counsel, responded to the Division’s December 3, 2015 letter. According to the letter, the Diverter now claims only 3 cfs under the pre-1914 claim of right. The Diverter further claimed to have repaired all leaking Water Treatment Tanks. The letter also outlined immediate and long-term solutions to address concerns raised in the Regional Water Board’s CAO and the State Water Board ROI. Nonetheless, due to the lack of timelines, specificity, identified consultants, and other

- factors, the Division and Regional Water Board Staff concluded that the letter did not demonstrate any commitments to actions substantially addressing the concerns outlined in the Regional Water Board's CAO and the State Water Board report of investigation. A true and correct copy of the Diverter's January 19, 2016 letter is offered into evidence as **Prosecution Team Exhibit WR-110**.
43. On February 12, 2016, the Regional Water Board and the State Water Board notified the Diverter in a joint letter ("February 12, 2016 Letter") that, in light of their January 19, 2016 response, they would pursue formal enforcement action. However, the February 12, 2016 Letter nonetheless encouraged the Diverter to continue developing and implementing corrective actions. A true and correct copy of the February 12, 2016 Letter is offered into evidence as **Prosecution Team Exhibit WR-112**.
44. On March 24, 2016, through their legal counsel, the Diverter responded to the February 12, 2016 letter from the Regional Water Board and the State Water Board. The Diverter stated they were committed to working with the Regional Water Board and the State Water Board to implement corrective actions. The letter stated that the Diverter had retained Joey Howard to implement the improvements and were working with Mid Klamath Watershed Council to identify funding assistance. The Diverter planned to install a 6" pipe in the conveyance ditch by spring 2016 in order to comply with the preliminary NMFS bypass flow requirements. Long-term solutions, such as returning flow to Stanshaw Creek would not be completed until June 2018. The letter stated that the Diverter would submit a Restoration and Monitoring Plan ("RMP") by April 15, 2016. A true and correct copy of the Diverter's March 24, 2016 letter is offered into evidence as **Prosecution Team Exhibit WR-115**.
45. In April 2016, I corresponded with Bob Pagliuci from NOAA and Harling from MKWC for a National Fish and Wildlife Foundation (NFWF) grant application that would provide funding assistance for MKWC design and install a 6" pipe in the MMR diversion ditch. The purpose was to understand the proposed project and how it would address issues raised in the Division ROI. True and correct copies of that correspondence are offered into evidence as **Prosecution Team Exhibit WR-117** and **WR-120**.
46. In a letter dated April 15, 2016, the Diverter's legal counsel provided a quarterly progress report. The letter stated they were finalizing plans and a contract for the 6" pipe. The letter further stated that "improvements to the Irving Creek outfall point are in the final stages of

- design and approval” and that “This portion of the resource improvements appears to be on track for completion by May 15, 2016.” The letter did not propose a RMP. A true and correct copy of the Diverter’s April 15, 2016 letter is offered into evidence as **Prosecution Team Exhibit WR-122.**
47. On April 20, 2016, in response to the March 24, 2016 and April 15, 2016 letters from the Diverter, Regional Water Board and Division enforcement staff, through legal counsel, e-mailed the Diverter’s legal counsel questions seeking clarification of the Diverter’s proposed scope of work, project proposals, and project time schedule. A true and correct copy of the April 20, 2016 email correspondence is offered into evidence as **Prosecution Team Exhibit WR-124.**
48. In a series of e-mail correspondence dated April 21, 2016, MKWC responded to questions from Division enforcement staff about the proposed 6” pipe project. MKWC anticipated completing the water efficiency study by July 2016. As for the NMFS flow recommendation, MKWC stated that “To take flows and adjust the diversion every day would be an incredible expense of time and energy.” MKWC therefore proposed measuring flow every two weeks and creating a recession graph of flows to predict what the flow would be by the next measurement two weeks later. MKWC would apportion the flow to the Diverter to be at or below 10 percent of the predicted flows at that time. True and correct copies of that correspondence are offered into evidence as **Prosecution Team Exhibit WR-125, WR-126, and WR-127.**
49. On May 13, 2016, Regional Water Board and Division Enforcement Staff met with Mr. Cole, the Diverter’s legal counsel, NMFS, representatives from the Mid-Klamath Watershed Council, and the Diverter’s engineers to discuss the questions listed in the Regional Water Board and State Water Board’s April 20, 2016 e-mail, as well as questions about bypass flow requirements and other elements of the project. A true and correct copy of the Diverter’s May 6, 2016 e-mail is offered into evidence as **Prosecution Team Exhibit WR-129.**
50. On May 15, 2016, the legal counsel for the Diverter emailed legal counsel for the Prosecution Team. The e-mail chain discusses the project proposal for the 6” pipe. In response to a reminder of the need to obtain necessary permits, secure required regulatory approvals, and comply with CEQA and NEPA, legal counsel for the Diverter stated “we

- understand and are working on those steps.” A true and correct copy of the e-mail is offered into evidence as **Prosecution Team Exhibit WR-132.**
51. The Diverter’s legal counsel sent a letter, dated May 20, 2016, to Office of Enforcement Attorney Kenneth Petruzzelli and copied Regional Water Board and Division enforcement staff and stakeholders. The letter answered questions posed by Regional Water Board and Division Enforcement Staff in the April 15, 2016 e-mail. In the letter, the Diverter maintained a consumptive use demand of 0.353 cfs. Among other consumptive use demands, the Diverter maintained a prior claim for “50 person human habitation water needs during average business levels,” which “can increase up to 500 people during fire camp residency periods.” According to the letter, the Diverter was seeking a grant from the NFWF Coho Enhancement Fund to fund a 6” pipe for the ditch. The 6” pipe would be sufficient to support the Diverter’s consumptive demand, but not enough to also support hydropower generation. If the Diverter diverted water for hydropower generation in addition to water for consumptive uses and still wished to divert up to 3 cfs, the Diverter would either need to install a second pipe or replace the 6” pipe with a single, larger pipe. NFWF ultimately declined to approve the Diverter’s grant application. A true and correct copy of the letter and associated exhibits is offered into evidence as **Prosecution Team Exhibit WR-135.**
52. In July 2016, I exchanged e-mail with Harling and Howard. MKWC was working on the grant application for a 6” pipe for the MMR diversion ditch, with Howard providing the engineering consulting services. In the e-mail exchanges, I requested and received clarification for consumptive use demand at Marble Mountain Ranch for different times of the year and under different conditions. Howard’s calculations were based on more detailed information than in the earlier Lennihan Report, particularly with regard to the amount of irrigated land. The irrigation demand in the Lennihan Report was based on acreage provided by Mr. Cole that roughly approximated the entire size of MMR. Howard and I determined a more precise irrigated land area based on satellite maps. Based on that refined information analysis, Howard estimated that the Diverter’s consumptive use demand was 0.18 cfs without a fire crew and 0.235 cfs when hosting a fire crew. A true and correct copy of each e-mail and attached spreadsheet with Howard’s calculations is offered into evidence as **Prosecution Team Exhibit WR-140.**

53. By August 2016, although the Diverter had started taking some steps to eliminate their misuse of water and adverse impacts to public trust resources, they have already fallen behind on their proposed time schedule. The Division had received no information indicating the Diverter had:
- Stabilized the head cut and slope at the Irving Creek outfall. The Diverter had proposed completing this task by April 15, 2016.
 - Reported completion of stabilizing the head cut and slope at the Irving Creek outfall with photographs. The Diverter had proposed completing this task by May 1, 2016.
 - Installed a six-inch pipe in the diversion ditch or headgate at the POD. The Diverter had proposed completing these tasks by July 1, 2016.
 - Completed energy audit and water efficiency study described in January 19, 2016 letter. The Diverter had proposed completing these tasks by July 1, 2016.
54. By letter dated August 3, 2016, the Division received updated written flow recommendations for Stanshaw Creek from NMFS. A true and correct copy of the NMFS bypass flow memorandum, dated August 3, 2016, is offered into evidence as **Prosecution Team Exhibit WR-141**.
55. On August 30, 2016, the Assistant Deputy Director requested that the State Water Board hold a hearing to receive evidence relevant to the Draft Order. The Assistant Deputy Director for the Division of Water Rights notified the Diverter of the hearing request by letter dated August 23, 2017. The letter and its attachments are offered into evidence as **Prosecution Team Exhibit WR-3**.
- a. In the August 30, 2016 hearing request and in the August 23, 2016 letter to the Diverter, Division Enforcement Staff gave the Diverter until June 30, 2018 to cease misusing water. Enforcement Staff considered the time until June 30, 2018 to constitute a reasonable amount of time for the Diverter to cease misusing water, because this was the amount of time the Diverter proposed to cease misusing water.
 - b. The time schedule in the Draft Order was developed based on the project timeline the Diverter proposed in the March 24, 2016 letter. Division Enforcement Staff coordinated with Regional Water Board Enforcement Staff to develop the time schedule and corrective actions in the Draft Order to ensure consistency with CAO R1-2016-0031. Where project milestones that the Diverter proposed would have

already passed, the Draft Order delayed compliance with these milestones, effectively granting time extensions for the early corrective actions.

- c. The Draft Order's established a time schedule with a series of project milestones. The Prosecution Team requested a hearing for a date coinciding with the deadline for the first project milestone. If the Diverter met the time schedule in the Draft Order, the parties could request to postpone the hearing. Since the issues relating to the diversion and use of water at Marble Mountain Ranch had been continuing for many years without resolution and the Diverter's proposed time schedule for eliminating the misuse of water would take nearly three years, the Prosecution Team was concerned that taking no action until June 30, 2018 would risk additional delay. By requesting a hearing date coinciding with the first project milestone and then postponing that hearing date if the Diverter met the project milestone, the Diverter would have a reasonable opportunity to eliminate the misuse of water while simultaneously preventing further delay.
- d. The corrective actions should eliminate the misuse of water and harm to public trust resources. Key corrective actions and the basis for such actions are summarized below.
 - i. The energy and water efficiency audits are preliminary to the identification of project alternatives and will provide information necessary to evaluate whether project alternatives will eliminate the misuse of water and protect public trust resources.
 - ii. Installing a locking headgate, valve, or other appropriately sized structure capable of regulating the diversion will ensure that the Diverter can adequately regulate the Marble Mountain Ranch diversion as flows in Stanshaw Creek change.
 - iii. Although not stated in the Draft Order, we concur with other recommendations for the addition of a fish screen. This would reduce the possibility of impacts to public trust resources as a result of Diversion from MMR.
 - iv. The Diverter must measure the diversion of water. According to the Draft Order, this is consistent with the requirements of sections 907 *et seq.* The

Prosecution Team recommends amending the Draft Order to instead cite Chapter 2.3, title 23, of the Code of Regulations.

- v. The Diverter shall eliminate unreasonable conveyance losses in the ditch. Potential physical solutions discussed thus far include piping or lining the ditch. Conveyance losses occur through seepage, evaporation, overtopping, and ditch failures. Although conveyance losses, such as those typically observed in an unlined ditch, may be considered reasonable in some circumstances, in this instance it increases the amount of water the Diverter must divert from Stanshaw Creek and decreases the amount of flow that would otherwise remain in Stanshaw Creek to support public trust beneficial uses. Regardless, conveyance losses that result in a discharge of pollutants or create a nuisance should be considered per se unreasonable.
- vi. Since the NMFS recommended bypass flow has daily criteria, the Diverter will need to adopt a method of monitoring Stanshaw Creek's flow, upstream of the Marble Mountain Ranch point of diversion, on a daily basis. We believe three stream gauges, one upstream of the POD, one within MMR diversion canal just downstream of the POD and one downstream of the point of diversion, below the Highway 96 culverts or below the location of where non-consumptive flows will be returned, are necessary to adequately monitor stream flow. The NMFS flow recommendation allows MMR to divert up to 10% of the unimpaired flow for consumptive demand. When diversions are occurring for non-consumptive demand (i.e. hydropower) MMR is required to bypass 2 CFS at the MMR POD and return all non-consumptive water at a point above the anadromous reach with negligible increases in water temperature. Stream gauges above the MMR POD and within MMR's diversion canal would show compliance when diversion for consumptive demand are occurring. Compliance would be determined by comparing the stream velocity recorded by a stream gauge above the POD to the stream velocity recorded within MMR's diversion ditch. The stream gauge above the POD and the stream gauge located in MMR's diversion ditch would also show the amount of water that is being bypassed. The stream gauge located below the Highway 96 culvert would show compliance

with the NMFS flow recommendations when non-consumptive diversions are occurring.

- vii. Ceasing discharges to Irving Creek, in addition to eliminating the discharge of pollutants, would contribute to meeting the NMFS flow objective. The flows discharged to Irving Creek are waters diverted in excess of consumptive demands and primarily used for hydropower generation. Restricting discharges to Irving Creek would encourage the Diverter to improve their diversion management and reduce impacts on public trust resources during the low-flow season.
 - viii. Returning water diverted and not put to consumptive use back to Stanshaw Creek is a component of the NMFS bypass flow recommendation. The majority of water the Diverter diverts from Stanshaw Creek is used for hydropower – a non-consumptive use. Returning water diverted and not put to consumptive use back to Stanshaw Creek will contribute significantly to meeting NMFS recommended flows protective of public trust resources.
 - ix. According to NMFS, the bypass flow recommendation would provide significant protection for public trust beneficial uses.
56. The State Water Board has previously issued decisions in enforcement proceedings for the misuse water. Notable hearings include Water Right Decision 1600, which considered the misuse of water by Imperial Irrigation District. The State Water Board subsequently issued Water Right Order 88-20, which ordered Imperial Irrigation District to submit a plan and implementation schedule for conservation actions. Finally, the State Water Board issued Water Right Order 2012-0004. True and correct copies of these water right decisions and orders are offered into evidence by reference, pursuant to California Code of Regulations, title 23, section 648.3. Water Right Decision 1600 is offered into evidence as **Prosecution Team Exhibit WR-20**, Water Right Order 88-20 is offered into evidence as **Prosecution Team Exhibit WR-21**, and Water Right Order 2012-0004 is offered into evidence as **Prosecution Team Exhibit WR-63**.
57. The Diverter has a history of non-compliance. In the course of the investigation, while reviewing the file, I identified a civil complaint, an application for temporary restraining order (TRO), and a TRO filed against the Diverter by the Siskiyou County District Attorney for violations of the Fish & Game Code, because the rock wing diversion dam was blocking

- the entirety of Stanshaw Creek despite requirements in the LSA to allow fish passage. When initially confronted by the Fish and Game warden the Diverter asserted that he had a pre-1914 water right, needed the water for his business. The complaint, application for TRO, and TRO are available in the file for Application 29449 (WR-5, Bates stamp p. 641-673) and offered separately into evidence as **Prosecution Team Exhibit WR-44**. The Diverter eventually settled and agreed to a stipulated judgment. A true and correct copy of the stipulated judgment, which I obtained from the Siskiyou County Courthouse, is offered into evidence as **Prosecution Team Exhibit WR-50**. True and correct copies of other records related to the District Attorney action against the Diverter are offered into evidence as **Prosecution Team Exhibit WR-43, 45, 46, and 47**. A full accounting of the incident is described in the file for Application 29449. (WR-5, Bates stamp p. 613-616, 641-673)
58. By letter dated September 30, 2016, the Diverter provided a progress report on its corrective actions to the Regional Water Board and Division. The letter stated that the Diverter could not meet its proposed time schedule, because it had failed to qualify for public grant funding and because consultants familiar with the project were unavailable. A true and correct copy of the letter is offered into evidence as **Prosecution Team Exhibit WR-147**.
59. On October 17, 2016, the Diverter sent a letter to Office of Enforcement attorney Kenneth Petruzzelli, and courtesy copied to Division and Regional Water Board enforcement staff. In the letter, the Diverter asserted that its diversion and use of water was not a waste, unreasonable method of use, or unreasonable method of diverting water. The letter further asserted that the State Water Board lacked jurisdiction under the public trust doctrine to “regulate” a pre-1914 water right by requiring a bypass flow. Finally, the Diverter conceded that it could not comply with the time schedules in CAO R1-2016-0031 or in the Draft Order. A true and correct copy of the letter is offered into evidence as **Prosecution Team Exhibit WR-150**.
60. On November 15, 2016, counsel for the Prosecution Team forwarded a series of questions from enforcement staff to the Diverter’s legal counsel by e-mail. The e-mail included two ability to pay forms typically used to collect ability to pay information in Regional Water Board cases. The ability to pay forms were included, because the Diverter often indicated that certain corrective actions were too expensive. A true and correct copy of the e-mail is attached as **Prosecution Team Exhibit WR-172**.

61. On December 16, 2016, the Diverter and the Diverter's legal counsel met with State Water Board Enforcement Program Managers John O'Hagan and Katherine Mrowka and Regional Water Board Assistant Executive Officer Shin-Roei Lee to discuss potential settlement. The Diverter offered to submit a revised time schedule and project.
62. In a letter dated December 20, 2016, sent to the Diverter and copied to legal counsel for the Prosecution Team, the Division of Drinking Water requested that the Diverter either submit a signed declaration stating that Marble Mountain Ranch had no more than 14 service connections and did not serve 25 or more people daily for at least 60 days out of the year. The Division of Drinking Water requested that the Diverter apply for a permit to operate a public water system if the Diverter served at least 25 people daily for at least 60 days a year. A true and correct copy of the letter is offered into evidence as **Prosecution Team Exhibit WR-155**.
63. By letter dated January 4, 2017, the Diverter's legal counsel provided a quarterly status report. In the letter, the Diverter stated it had retained a new team of consultants and were proceeding with a sedimentation study pursuant to the Regional Water Board CAO and evaluating alternatives to piping the diversion ditch. A true and correct copy of the letter is offered into evidence as **Prosecution Team Exhibit WR-156**.
64. By letter dated January 11, 2017, legal counsel for the Diverter responded to the November 15, 2016 information request from Division and Regional Water Board Enforcement Staff. A true and correct copy of the letter is offered into evidence as **Prosecution Team Exhibit WR-157**.
65. On January 17, 2017, the Division of Drinking Water received a signed declaration from the Diverter stating that Marble Mountain Ranch did not meet the definition of a public water system, because it does not serve at least 25 individuals at least 60 days out of the year. A true and correct copy of the declaration is offered into evidence as **Prosecution Team Exhibit WR-158**.
66. By letter dated February 6, 2017 the DFW, copied to legal counsel for State Water Board and Regional Water Board Enforcement Staff, DFW informed the Diverter that notifying DFW was required, pursuant to California Fish and Game Code section 1602, for an act of diversion that is substantial. Attached to the February 6, 2017 letter was a prior letter to the Diverter, dated May 16, 2016, also informing the Diverter of the requirement to notify

- DFW of the act of diverting water. A true and correct copy of the letter is offered into evidence as **Prosecution Team Exhibit WR-159**.
67. By letter dated February 8, 2017, the Diverter, through legal counsel, proposed a revised time schedule and project to address the corrective actions in the Regional Water Board CAO and in the Draft Order. A true and correct copy of the letter is offered into evidence as **Prosecution Team Exhibit WR-160**.
68. By letter dated March 15, 2017, legal counsel for the Diverter submitted a letter to the DFW for notification of lake or streambed alteration. A true and correct copy of the letter is offered into evidence as **Prosecution Team Exhibit WR-161**.
69. By letter dated April 14, 2017, DFW notified the Diverter that it had received a complete notification of lake or streambed alteration and would issue a draft Lake or Streambed Alteration Agreement (LSA) within 60 days. The Diverter's notification of lake or streambed alteration is attached to the letter. A true and correct copy of the letter is offered into evidence as **Prosecution Team Exhibit WR-164**.
70. On June 9, 2017, DFW issued a draft LSA to the Diverter. Among other actions, the draft LSA proposed that the Diverter comply with the NMFS flow recommendation, measure diversions, install a fish screen, and, subject to approval of the Regional Water Board, that all discharges associated with the diversion of water attain turbidity requirements contained in the Basin Plan. Complying with the bypass flow for the LSA would require returning water diverted and not put to consumptive use back to Stanshaw Creek. A true and correct copy of the letter is offered into evidence as **Prosecution Team Exhibit WR-166**.
71. The Diverter submitted a quarterly progress report in a letter dated June 30, 2017. The letter also responded, partially, to the Regional Water Board's June 27, 2017 NOV. According to the letter, the Diverter was actively soliciting a consultant to plan for installing a pipe in the upper part of the diversion ditch. Within the next quarter, the Diverter planned to complete plans for piping the upper part of the ditch, evaluate funding opportunities for implementing corrective actions, and complete the DFW LSA. However, the Diverter also installed a culvert for tailwater discharge from the hydropower system and filed a Report of Waste Discharge with the Regional Water Board, an action inconsistent with a goal to eventually cease discharging to Irving Creek or return tailwater from hydropower operations back to Stanshaw Creek. This would effectively preclude complying with the NMFS flow recommendation. The letter further also summarizes a heat sink system, initially described

1 recommendation. The letter further also summarizes a heat sink system, initially described
2 in the Water Use Technical Memorandum. According to the letter, "Electricity in excess of
3 the ranch's need powers the heat sink resistor and heats the water that runs through the
4 resistor to avoid overloading the electrical system." According to the Water Use Technical
5 Memorandum, "The heat sink resistor is necessary in this configuration to avoid
6 overloading the electrical system." A true and correct copy of the letter is offered into
7 evidence as **Prosecution Team Exhibit WR-168**.

7 72. By letter dated September 22, 2017, the Diverters provided a quarterly update. The update
8 included an update on the status of regulatory approvals. The Diverters further stated that
9 complying with the NMFS flow recommendation was incredibly costly, because they could
10 not operate their Pelton wheel. Instead, they had to rely on the diesel generator, which cost
11 "thousands of dollars a month." According to the Diverters, meeting the NMFS flow
12 recommendation requires them to incur costs they could otherwise redirect to implementing
13 improvements at MMR. To support their claim, the Diverters included their tax return for
14 2016. In addition, the Diverters explained hardships caused by recent fires and a proposal
15 engineering services prepare plans and specifications to pipe the ditch. A true and correct
16 copy of the letter is offered into evidence as **Prosecution Team Exhibit WR-186**.

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

20 **Prosecution Team Exhibit WR-123**

21 I declare under penalty of perjury to the laws of the State of California that the foregoing is true
22 and correct. Executed September 25, 2017, at Sacramento, California.

23 
24 SKYLER ANDERSON