

July 12, 2017

VIA U.S. MAIL & EMAIL
(wrhearing@waterboards.ca.gov)

Steven Moore
Vice Chair
State Water Resources Control Board
1001 I Street, 2nd Floor
Sacramento, CA 95814

Re: Douglas and Heidi Cole, Marble Mountain Ranch Request to Reschedule Public Hearing and Notice of Intent to Appear

Dear Mr. Moore:

In Mr. Petruzzelli's correspondence to you dated July 11, 2017, with regard to Douglas and Heidi Cole (the "Coles") and Marble Mountain Ranch ("Ranch") request to reschedule hearing and notice of intent to appear ("NOI"), Mr. Petruzzelli indicated that the "Prosecution Team... objects to the Diverter's [the Coles and the Ranch] NOI." Mr. Petruzzelli's letter alleges that the Coles have made no offer of proof demonstrating the need for additional direct oral testimony at the public hearing that was identified in the NOI. Mr. Petruzzelli also notes that the "Prosecution Team anticipates submitting a request for additional time when a formal service list is available with an offer of proof demonstrating good cause for the [Prosecution Team's] additional oral direct testimony." There is no required procedure for making the request for additional time and offer to show proof of good cause for that request. Thus, there is no requirement to request additional time and offer of proof to show good cause for additional direct oral testimony at the public hearing at this time.

Given the scope of the issues to be addressed at the public hearing and the impact those issues would have on the Coles' water right, we propose that the request for additional time and offer to show good cause from all parties making such a request occur at a pre-hearing conference prior to the date of a rescheduled hearing.

The issues to be considered at the public hearing include determining whether to place additional requirements on the Coles' water right that would so impair their right as to render it largely unusable. The bypass flow recommendation from the National Marine Fisheries Services that we anticipate will be relied upon during the hearing, require that


the Coles forego using their water right in most circumstances on Stanshaw Creek. Without the ability to divert water from Stanshaw Creek, the Coles will no longer be able to operate their business and would likely render their Ranch valueless. Their water right provides them with not only the water they use for hydroelectric power generation, but provides them with all water they use for their domestic and consumptive needs.

The impacts from any decision made at the hearing on the Coles' water right and the use of the Ranch, highlights the need to reschedule the hearing to ensure that the Coles may adequately prepare their defense. Not only can the determination made at the hearing close the Coles' business, it could result in a testing of all the property value of the Ranch. Therefore, due process requires that they have adequate time to prepare their defense.

Please contact me with any questions regarding this correspondence at barbara@churchwellwhite.com or (916) 468-0625.

Regards,

Churchwell White LLP


POB Barbara A. Brenner
KAF/dmg

cc: (via email only)

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