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Received by the Hearings Unit on  
11/19/17

Attorneys for the Prosecution Team

BEFORE THE STATE WATER RESOURCES CONTROL BOARD  
STATE OF CALIFORNIA

9 In the Matter of: )  
10 DOUGLAS AND HEIDI COLE AND ) REQUEST FOR EXTENSION OF  
11 MARBLE MOUNTAIN RANCH ) DEADLINE TO FILE CLOSING BRIEFS

12 The Prosecution Team in the Matter of Douglas and Heidi Cole and Marble Mountain  
13 Ranch requests an extension of the proposed deadline for the filing of closing briefs.

14 At the close of the hearing on November 16, 2017, the advisory attorney for the Hearing  
15 Team, Ms. Lily Weaver, announced that transcripts would be available in 11-15 days and briefs  
16 would be due 30 days after that. (*see* Declaration of Kenneth Petruzzelli in Support of Request for  
17 Extension of Deadline For the Filing of Closing Briefs (“Petruzzelli Decl.”), at para. 5.) The tenth  
18 day after November 16, 2017 is Sunday, November 26, 2017. The fifteenth day would fall on  
19 December 1, 2017. This would translate to a briefing deadline of December 27, 2017 through  
December 31, 2017. (*Id.*)

20 My wife and I are currently expecting our first child. Our due date is December 7, 2017.  
21 (*Id.* at para. 2.) I anticipate working until my wife goes into labor. (*Id.*) My latest likely date to  
22 return from paternity leave would be January 23, 2018. (*Id.*) I informed the Hearing Team that my  
23 wife and I are expecting our first child in a letter dated July 11, 2017 that responded to a request by  
24 Douglas and Heidi Cole and Marble Mountain Ranch (collectively the “Diverters”) to postpone the  
25 hearing. (*Id.* at para. 3.) The Hearing Officer recognized my scheduling limitations in its Notice of  
26 Rescheduled Public Hearing dated August 16, 2017. (*Id.*) I informed Vice Chair Moore again that  
27 my wife and I are expecting our first child in early December in a letter dated September 13, 2017.  
28 (*Id.* at para. 4.)

The anticipated range of briefing deadlines falls within the span of my planned paternity  
leave. I therefore request an extension of the deadline for filing closing briefs to a date no earlier

1 than March 2, 2018. This date would allow time for a potential late labor, paternity leave, 30  
2 additional days for brief writing, and a week to adjust to returning to work. More time would be  
3 preferred and welcome to allow for greater peace of mind during paternity leave, but the  
4 Prosecution Team would like to keep its request reasonable.

5 This extension request is reasonable. I informed the Hearing Team and the parties that my  
6 wife and I are expecting our first child through noticed correspondence on July 11, 2017 - about  
7 four months ago. The Office of Enforcement and Division of Water Rights have worked on this  
8 investigation and enforcement action for nearly three years. (*Id.* at para. 6.) No other attorney in the  
9 Office of Enforcement is reasonably capable of becoming familiar enough with the record and  
10 technical issues of water law quickly enough to draft and file a closing brief with the currently  
11 proposed range of deadlines. (*Id.* at para. 7.) A denial of this request would be extremely  
12 prejudicial to the Prosecution Team.

13 The Prosecution Team has met and conferred with legal counsel for most other parties.  
14 None have indicated any opposition to extending the deadline to file closing briefs. (*Id.* at para. 8.)

15 The Prosecution Team believes its request is reasonable given the circumstances, four-  
16 month advance notice, and lack of opposition voiced by other parties. A denial of this request  
17 would be extremely prejudicial to the Prosecution Team, particularly in light of the time and  
18 resources the Office of Enforcement and the Division of Water Rights have spent on this  
19 investigation, enforcement action, and hearing over the last three years.

20 The Prosecution Team therefore requests an extension of time for the filing of closing  
21 briefs. With my wife's due date drawing near, we request a quick decision so the Office of  
22 Enforcement may develop a contingency plan if this request is denied.

23 Respectfully submitted,

24 

25 Kenneth Petruzzelli  
26 **OFFICE OF ENFORCEMENT**  
27 Attorney for the Prosecution Team  
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**SERVICE LIST OF PARTICIPANTS**  
**Douglas and Heidi Cole and Marble Mountain Ranch**  
**Waste and Unreasonable Use Hearing**  
**Scheduled for August 22, 2017**

**PARTIES**

THE FOLLOWING **MUST BE SERVED** WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (All have AGREED TO ACCEPT electronic service, pursuant to the rules specified in the hearing notice.)

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**SERVICE LIST OF PARTICIPANTS**  
**Douglas and Heidi Cole and Marble Mountain Ranch**  
**Waste and Unreasonable Use Hearing**  
**Scheduled for August 22, 2017**

**PARTIES, CONT'D**

THE FOLLOWING **MUST BE SERVED** WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (All have AGREED TO ACCEPT electronic service, pursuant to the rules specified in the hearing notice.)

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<p><b>PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS AND INSTITUTE FOR FISHERIES RESOURCES</b> Noah Oppenheim Regina Chichizola P.O. Box 29196 San Francisco, CA 94129-8196 <a href="mailto:regina@ifrfish.org">regina@ifrfish.org</a></p>	

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9 Attorneys for the Division of Water Rights Prosecution Team

10 BEFORE THE STATE WATER RESOURCES CONTROL BOARD  
11 STATE OF CALIFORNIA

12 In the Matter of: )  
13 DOUGLAS AND HEIDI COLE AND ) DECLARATION KENNETH  
14 MARBLE MOUNTAIN RANCH ) PETRUZZELLI IN SUPPORT OF  
15 ) REQUEST FOR EXTENSION OF  
16 ) DEADLINE TO FILE CLOSING BRIEFS  
17 )

18 I, Kenneth Petruzzelli, declare as follows:

19 My testimony, herein provided, is based on my personal knowledge

- 20 1. I am an attorney for the State Water Resources Control Board (State Water Board), Office  
21 of Enforcement. I have been the lead attorney for the Division of Water Rights Prosecution  
22 Team in the above-entitled matter since November 2015. I have also acted for the lead  
23 attorney for the related and coordinated enforcement action by the North Coast Regional  
24 Water Quality Control Board (Regional Water Board). I have personal knowledge of all  
25 facts stated in this declaration and, if called as a witness, could and would testify  
26 competently under oath.
- 27 2. My wife and I are expecting our first child. Our due date is December 7, 2017. I currently  
28 anticipate taking four weeks for paternity leave. I plan on working until my wife goes into  
labor so I can spend as much time as possible with our new son and maximize my  
accumulated annual leave. Based on this plan, my latest anticipated date of return to work  
would be Thursday, January 23, 2018. This would include two weeks following December  
7, 2017 to account for the possibility of a late delivery, four weeks for my planned paternity  
leave, and three days for the holidays Christmas, New Year's, and Martin Luther King Jr.  
Day. This assumes labor and delivery go smoothly and there are no complications. We have  
only recently finalized our respective leave plans, since Human Resources waits until about

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30 days before your expected due date to discuss leave and process paperwork. My planned paternity leave has been approved by Human Resources.

3. I informed Vice Chair Moore that my wife and I are expecting in early December in a letter dated July 11, 2017 that responded to a request by Douglas and Heidi Cole and Marble Mountain Ranch (collectively the “Diverters”) to postpone the hearing. I requested a hearing date no later than mid-November in order to finish the hearing before my wife would likely go into labor. I further informed Vice Chair Moore than I planned on taking paternity leave. A true and correct copy of that letter is posted to the hearing webpage at [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/hearings/marblemountain/docs/mmr\\_pt071117ltr.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/marblemountain/docs/mmr_pt071117ltr.pdf). The Hearing Officer recognized my scheduling limitations in its Notice of Rescheduled Public Hearing dated August 16, 2017, which is posted to the hearing webpage at [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/hearings/marblemountain/docs/reschedule\\_notice\\_marblemountain.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/marblemountain/docs/reschedule_notice_marblemountain.pdf).
4. I informed Vice Chair Moore again that my wife and I are expecting our first child in early December in a letter dated September 13, 2017. That letter responded to an additional request by the Diverters to postpone the hearing. My wife’s expected due date was a significant reason for opposing a later hearing date. I again explained that I planned on taking paternity leave. A true and correct copy of that letter is posted to the webpage at [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/hearings/marblemountain/docs/mmr\\_pt091317ltr.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/marblemountain/docs/mmr_pt091317ltr.pdf).
5. To the best of my recollection, at the close of the hearing on November 16, 2017, the advisory attorney for the Hearing Team, Ms. Lily Weaver, announced that transcripts would be available in 11-15 days and briefs would be due 30 days after that. The tenth day after November 16, 2017 is November 26, 2017 – a Sunday. The fifteenth day would fall on December 1, 2017. This would translate to a briefing deadline of December 27, 2017 through December 31, 2017. This anticipated range of briefing deadlines falls within the span of my planned paternity leave. It also falls within the week between Christmas and New Year’s, which is a week when many people take vacation and focus on spending more time with family.
6. I was the only attorney assigned to the above-entitled matter until Ms. Heather Mapes was assigned to assist me shortly after the June 9, 2017 Notice of Public Hearing. Her primary background has been water quality and cannabis enforcement and she has focused on the

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water quality aspects of the hearing. I am the only attorney in the Office of Enforcement with detailed knowledge and understanding of the entire record and the technical issues of water rights law.

- 7. Since the meeting in Orleans on December 17, 2014, the Office of Enforcement has devoted nearly three years of effort to the current investigation and enforcement action against the Diverters.
- 8. After the close of hearing on November 16, 2017, I discussed the conflict of the briefing timeline with my planned paternity leave with the legal counsel still present. To the best of my recollection, they included Mr. Konrad Fisher and legal counsel for the Diverters, the Department of Fish and Wildlife, the Karuk Tribe, and Klamath Riverkeeper. I stated that the briefing timeline would conflict with my planned paternity leave in correspondence with Christopher Keifer, legal counsel for the National Marine Fisheries Service, on November 17, 2017. I have indicated to each of these persons that I plan to request an extension of the briefing deadline to accommodate my planned paternity leave. None have indicated any opposition.
- 9. The thirtieth day after my planned return from paternity leave would be February 22, 2018.

I declare under penalty of perjury to the laws of the State of California that the foregoing is true and correct. Executed November 19, 2017, at Sacramento, California.

  
KENNETH PETRUZZELLI