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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 PERMISSION TO FILE
11 MARBLE MOUNTAIN RANCH) OVERSIZED CLOSING BRIEF
_____)

12 The Prosecution Team for the Division of Water Rights in the above-captioned matter
13 requests permission to file an oversized closing brief. At the close of the hearing on November 16,
14 2017, the Hearing Team announced that closing briefs would be limited to 15 double-spaced lines.
15 The Prosecution Team is concerned that 15 pages is insufficient to adequately address the relevant
16 issues, facts, and law and would offer little opportunity for meaningful analysis or discussion.

17 To put the page limit in context, the Prosecution Team's Pre-Hearing Brief was 16 pages
18 with one and one-half spaced lines.¹ However, the Pre-Hearing Brief only provided a general
19 overview of the case, with a general discussion of the issues, factual background, and law. Analysis
or discussion of legal and factual issues would have required longer briefing.

20 The limit of 15 pages is unusually short compared to closing briefs filed in other
21 enforcement proceedings. Closing briefs filed by prosecution teams in previous enforcement
22 actions have often fallen within the range of roughly 20-25 pages. Among a non-exhaustive sample
23 of prior cases, closing briefs filed by the prosecution team averaged 18 pages in length. In cases
24 where prosecution teams have filed shorter closing briefs, the hearing only lasted a day, there were
25 fewer exhibits, and fewer parties. The current action has a much larger record. A sample of closing
26 briefs filed by prosecution teams in prior enforcement proceedings are listed below with the

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¹ Available at
28 https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/marblemountain/docs/mmr_coleptphb10061.pdf

1 number of pages in each closing brief.

- 2 • In The Matter Of Hearing On Draft Cease And Desist Order - Woods Irrigation Company²
(19 pages)
- 3 • Phelps, Ratto, Conn, Silva, et al. Term 91 Administrative Civil Liability Hearing³ (22
4 pages)
- 5 • Millview County Water District – Revocation Hearing⁴ (11 pages)
- 6 • Dunkel – Cease and Desist Order Hearing⁵ (16 pages)
- 7 • California American Water – Cease and Desist Order Hearing⁶ (24 pages)
- 8 • G. Scott Fahey and Sugar Pine Spring Water LP – Administrative Civil Liability (ACL)
9 Cease and Desist Order (CDO) Hearing⁷ (25 pages)
- 10 • US Bureau of Reclamation & California Department of Water Resources
11 Delta Salinity Draft Cease and Desist Orders and Water Quality Response Plan Hearing⁸
(25 pages)
- 12 • Robert Mann (Individual & Trustee) And Robert C. Mann 1999 Trust -
13 Administrative Civil Liability And Cease And Desist Order Hearing⁹ (10 pages)
- 14 • Hidden Lakes Estates Waste and Unreasonable Use Hearing¹⁰ (10 pages)

15 To adequately address the issues, facts, and law in a meaningful way, the Prosecution Team
16 requests permission to file a closing brief of up to 25 pages. The Prosecution Team will make every

17 _____
18 ² Available at
https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/woods_irrigation/docs/woodscedo_closing_brief_prosecutionteam.pdf

19 ³ Available at
https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/phelps_ratto_conn_silva/docs/swrcbclosingbrief.pdf

20 ⁴ Available at
https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/millview_revocation/docs/mwr_cb_prosecution.pdf

21 ⁵ Available at
https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/dunkel/docs/dunkelcdo_closingbriefs_prosecution091310.pdf

22 ⁶ Available at
https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/caw_cdo/docs/prosecutionteam.pdf

23 ⁷ Available at
https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/fahey/docs/faheyacldo_pt_closebrief061716.pdf

24 ⁸ Available at
https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/delta_salinity/docs/closing_briefs/closing_brief_enforcement_team.pdf

25 ⁹ Available at https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/mann/docs/pt_closing.pdf

26 ¹⁰ Available at
https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/hidden_lakes_estates/docs/hiddenlakes_closingbriefs_prosecution032210.pdf

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effort to be concise and avoid repetitive, duplicative briefing. The Prosecution Team does not oppose extending the same opportunity to the other parties.

Respectfully submitted,



Kenneth Petruzzelli
OFFICE OF ENFORCEMENT
Attorney for the Prosecution Team

SERVICE LIST OF PARTICIPANTS
Douglas and Heidi Cole and Marble Mountain Ranch
Waste and Unreasonable Use Hearing
Scheduled for November 13, 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
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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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