

Memorandum

To : Ms. Victoria A. Whitney, Chief
Division of Water Rights
State Water Resources Control Board
Post Office Box 2000
Sacramento, CA 95812

Date: December 7, 2005

Attention Mr. Paul Murphey
Via Fax: (916) 341-5400

From : Robert W. Floerke, Regional Manager *COPY – Original signed by Robert W. Floerke*
Department of Fish and Game - Central Coast Region, Post Office Box 47, Yountville, California 94599

Subject : Outstanding Issues Related to Water Right Application 30166 by El Sur Ranch to Divert Water from the Big Sur River, Monterey County

The Proposed Project

Water Application (WA) 30166, submitted by the El Sur Ranch, proposes to divert 1800 acre-feet of water per annum on a year-round basis. The diversion wells are located in Andrew Molera State Park and tap underflow from the Big Sur River not far upstream from the lagoon at the mouth. The State Water Resources Control Board (SWRCB) is the State lead agency for the California Environmental Quality Act (CEQA) review of the project and is currently preparing an Initial Study. Protests to this water right application have been filed by Department of Parks and Recreation (DPR), Department of Fish and Game (DFG), and California Sportfish Protection Alliance (CalSPA).

DFG's interest in this application is based on its status as trustee and responsible agency for fish and wildlife resources in California. As such, DFG has, in the past three years, reviewed and commented on various documents provided by the SWRCB. This memo summarizes the information we believe is needed to allow appropriate disclosure for this project, and summarizes that which has been requested but not yet provided.

Summary of Issues to be Addressed Based on DFG Responses to SWRCB Requests for Comments

November 6, 2002: DFG responded to the SWRCB Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the project and identified several areas for which additional information needed to be provided, in order to prepare the EIR, including:

1. The status of sensitive resources known to occur in the vicinity of the diversion, including seven sensitive species (three Federally listed) and one sensitive natural community.
2. Whether the proposed diversion would have significant impacts on the sensitive resources at the diversion site, and measures identified which would avoid or minimize impacts to public trust resources.
3. The status of sensitive resources potentially occurring at the place of use of the diverted water, including ten sensitive species (four State or Federally listed) and one sensitive natural community.

4. Potential impacts to the place of use from the application of 1,800 acre feet (af) of water, such as acceleration of seabluft retreat and coastal erosion, increased runoff that can lead to erosion and sedimentation, alteration of habitats, and decline of associated species.
5. Whether the proposed project would have significant impacts on the sensitive resources at the place of use, and measures identified which would avoid or minimize impacts to public trust resources.

Additionally, we requested specific information to address the effect that the proposed diversion would have on the flows of the Big Sur River; information on resources supported by those flows was also requested, including:

6. A water availability analysis, including a water budget which would address water availability and water consumption in the watershed, and propose defensible flow reservations for the various trust resources dependent on the riverine environment. The water analysis should be stratified by five water-year types (Wet, Above Normal, Median/Average, Below Normal/Dry and Critically Dry) and segregated base on 20 percent, 40 percent, 60 percent, 80 percent exceedence flows.
7. An Instream Flow Incremental Methodology (IFIM), or other fisheries flow analysis that is acceptable to DFG and the National Marine Fisheries Service, be conducted in order to define flows necessary to support public trust resources.
8. Analysis should also address the effects the diversion has on water temperature, riparian health and canopy, salinity, and other water quality parameters which may be influenced by the diversion.

Finally, this request for water diversion appears to be far in excess of that which is considered a beneficial use, potentially constituting waste (which is prohibited by California law); that the request was far in excess of the historic (and unpermitted) use of the wells; that the request is not consistent with the Department of Water Rights (DWR) published information regarding general water duties in California; and that the request may not be consistent with conservation easements and/or conveyance documents for the property. We asked that the SWRCB determine both the appropriate level of such a request and establish a baseline so that impacts of the proposed diversion could be evaluated. Toward this end, we requested information to establish historic use and baseline:

9. Information needed to establish baseline use should include data such as parcel and water right conveyances, easements, well logs, water meters, or electrical bills demonstrating water use, or other information that would clarify historic use and basis for any riparian rights.
10. Consistency with the terms and conditions of any conservation easement placed over the El Sur Ranch lands; and terms and conditions which may have been placed at the time of conveyance of DPR lands from Frances Molera to The Nature Conservancy and from The Nature Conservancy to DPR.

11. Full disclosure of the location of all water use, including whether any portion of this will require an out-of-basin transfer.
12. Identification of any portion of the proposed place of use which is subject to an existing riparian right.

As State lead agency, SWRCB is responsible for collecting the information needed to fully understand the potential impacts of the project, to both the place of diversion and the place of use. It is our understanding that you have, in turn, asked the applicant to supply this information. In partial response to SWRCB's request for information (to address 6, 7 & 8 above), the applicant proposed an Interim Monitoring Plan (Monitoring Plan) to collect information regarding flows, effects on flows of differing levels of diversion, and the effect of the diversion on quality and quantity of aquatic habitat.

July 9, 2004: In response to a request by SWRCB to review the Monitoring Plan proposed by El Sur Ranch, DFG identified several minor changes. It was expected that these minor revisions in the proposed Monitoring Plan would provide adequate information for the analysis needed to assess the type and magnitude of impacts to sensitive aquatic resources of the Big Sur River caused by this diversion and others in the well field. The revisions requested included:

- The effect of pumping on temperature and dissolved oxygen (DO) in the lagoon and other areas subject to temporal changes due to depth, aquatic vegetation, or proximity to the well field through the use of continuous temperature and DO monitoring.
- The effects of pumping on stage/flow, habitat quality, and habitat availability to be clearly distinguishable from any effects caused by changes in the natural flow. This was to be accomplished by sampling during specific "pump on" and "pumps off" periods, with adequate time allowed for recovery in between these sampling events.
- The effects of different pumping regimes (including different pumping rates, pumping durations, and the recovery times between pumping tests) on temperature, DO, flow, habitat quality and availability.

Although relatively minor, the requested revisions were not made. The results, presented in the technical reports described below, were not sufficient to determine the effects of diverting the proposed amount of water at the proposed diversions rates on the quantity and quality of aquatic habitat in the Big Sur River.

September 16, 2005: The SWRCB requested DFG, NOAA, DPR and CalSPA to review and comment on the technical reports provided by El Sur Ranch. Our comments were specific to the technical reports, though we did take the opportunity to inform the SWRCB that those reports were intended to be responsive to only 5 of the 12 areas of our original request for information (6, 7 & 8 and 9 & 12) and that there were other issues which had not yet been addressed. In summary, we commented that the technical reports were not entirely successful in addressing even that limited scope.

Comments and questions provided to SWRCB by DFG in our September 16, 2005 memo concerning the technical reports are technical in nature, asking for specific clarification of data collected and conclusions drawn from the data collected, on all three technical reports. We also referenced and attached the previous correspondence regarding the NOP, the Interim Monitoring Plan, and an internal memo from our Senior Engineering Geologist. Our comments are too numerous to summarize here, or to characterize them in general classes, other than to note that we reviewed and commented on all three technical reports. Our September 16, 2005 memorandum can be reviewed for the full text of our comments.

In addition, SWRCB was notified that DFG did not have the necessary expertise required to completely evaluate the technical data pertaining to Hydrogeology and Water Use in the Reports. Since these topics have the ability to affect the interpretation of the biological impacts, DFG is seeking outside expertise for additional review prior to providing final comments. Although an interagency contract request was submitted on October 4, 2005, we are still awaiting final contract approval to complete the expert review.

October 14, 2005: DFG also received an email from the applicant's consultant, Hunter-Ruiz, in response to a request via email on September 30, 2005, for some additional technical information related to our review of the Technical Report. Only partial information was provided and, in addition to the technical information requested in the September 16, 2005 letter and referred to above, the email response left the following issues unanswered:

- Request #1 for a discussion and interpretation of the effects of pumping on DO levels as was done for water level and temperature in Hydrogeological Section 3.4.8.2. Response did not provide the requested information. Data for DO from the same sources used for temperature and water level analysis is available (Appendix M, Page 1 of 1) to provide the requested discussion and interpretation.
- Request #2 for inclusion of water quality data collected on July 12, 2004 at stations 7, 8, 9, and 10 located nearest the well field. This could not be provided because field samplers could not find the sites identified by flagging and GPS.
- Request #3 for correlation between sampling data and whether pumps were on or off; in tabular form as well as discussion. We were only given a table showing pump condition. The data provided for September 30, 2005 is inconsistent with the data in the certified Technical Report and also with other tables received in the October 14, 2005 response. No discussion of the correlation was provided.
- Request #4 for integration of data in Table 2-2 (El Sur Daily Pumping Rate) and Figure 3-45 (Spring Tide Effects on Electrical Conductivity in Old Well/New Well). This was only provided for the old well. Data is inconsistent with pumping information provided in response to Request #3 above.

- Request #5 for reconciliation of figures 3-47 and 3-48 as related to Source Group, Inc.'s saltwater intrusion model. DFG must wait until the outside consultant can review the response before verifying the information requested was received.

Status of Information Requests

In response to the NOP for this project, DFG requested information be provided on 12 topics, covering 3 basic areas of concern. The applicant then proposed a Monitoring Plan, intended to provide data partially responding to 3 of the 12 original items (6, 7 & 8) listed in the NOP comments. In response to a SWRCB request, DFG provided comments on that Monitoring Plan to further refine it to be more responsive to the concerns listed in the NOP comments. None of the modifications suggested were incorporated into the Monitoring Plan.

The applicant has now provided three technical reports, the first two reporting on aspects of the Monitoring Plan, and the third partially addressing two other items (9 and 12) identified in our NOP comments. After review of the technical reports, DFG provided detailed comments to the SWRCB concerning the information that still requires clarification and disclosure, with the caveat that final comments on these reports would be provided after a contract for outside expert review was approved. That contract is nearing approval, and we are reluctant to proceed with review and final comments until we have received the additional information requested in our September 16, 2005 letter and September 30, 2005 email. We would like clarification from you if it is your expectation that the applicant will be providing this information to you to allow review under our pending interagency contract.

In addition to the specific deficiencies identified above, we do not believe the information provided by the applicant is responsive to other points of our original comments provided to the SWRCB on November 6, 2002, in response to your NOP. We would like clarification from your agency whether you have the expectation that the applicant will be providing that information to you for your use in preparation of the EIR.

If you have questions or concerns, please contact Ms. Linda Hanson, Staff Environmental Scientist, at (707) 944-5562; or Mr. Carl Wilcox, Habitat Conservation Manager, at (707) 944-5525; or by writing to DFG at the above address.

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