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Date: 12/12/2009 1:35 PM
Subject: El Sur Ranch Water Right App 30166

Dear Mr. Murphy,

Thank you for the opportunity to respond to the DEIR for the El Sur Ranch Water right application 30166. I have mailed a hard copy to your Sacramento PO Box 2000 on 12/12/09 and emailed the same to you with this email.

Thank you for what you and your staff do for us EVERYDAY.

Sincerely,

Hank Smith
Carmel River Steelhead Association
1314 Josselyn Canyon Road
Monterey, CA 93940
831-372-8226

Paul Murphey
Division of Water Rights
State Water Resources Control Board
Post Office Box 2000
Sacramento, CA 95812

December 11, 2009

RE: El Sur Ranch Water Right Application No. 30166
Draft Environmental Impact Report

Dear Mr. Murphy:

I have serious concerns in regards to the Draft Environmental Impact Report (DEIR) for the El Sur Ranch Water Right Application Number 30166. It is seriously flawed, inaccurate, and does not conform to CEQA guidelines.

Because the applicant continues to illegally divert Public Trust resources resulting in damage to environmental and public resources, I request that the State Water Resources Control Board (SWRCB) immediately issue a Cease and Desist Order to the applicant and hold hearings on the application.

The following is a list of the flaws in the DEIR:

1: The DEIR is flawed by not noting the requirements of minimum flow as set by the California Department of Fish and Game (CDFG).

CDFG has set 40 cfs minimum flow rates as measured at the U.S.G.S. gauging station to assure continued viability of stream-related wildlife resources. CDFG has specified this minimum flow requirement to assure safe fish passage. The DEIR does not mention this critical specific cfs CDFG requirement and therefore is flawed.

2: The DEIR is flawed in Impact 4.3-1 (Adult fish passage) by allowing baseline pumping to continue below legal depths for adult fish passage and by ignoring CDFG regulations relating to minimum flow rates for safe fish passage.

Established safe adult fish passage criteria are 0.6 feet water depth for 25% of stream width of which 10% is continuous. High water events can move sediment plumes such that riffle profiles change so much that safe fish passage is impaired. The DEIR, on pages 4.3-36 and 4.3-7 states that at 12cfs several transects did not meet the depth requirements for safe adult fish passage. California agriculture has a long history of adapting to the changes in precipitation amounts each year and crop planning in accordance with these changes. This DEIR ignores this reality by allowing pumping to occur in disregard to the negative environmental impacts of such diversions when flow rates are low

The DEIR is further flawed by using the date of December 1 as the starting date for adult fish migration from only two visits to the site. Fish migrate when precipitation amounts contribute to water conditions that allow safe passage. and not by a date an observer notes on his or her calendar.

3. The DEIR is flawed in Impact 4.3-4 (dissolved oxygen levels) in that the mitigation measures are untested and contradictory.

"Baseline" diversion pumping does not mitigate low river water quality levels. Low river water quality levels are exacerbated by pumping. The DEIR fails to identify sites and sources where the employment of pumps and pips have been successfully used to mitigate for decreases in water quality due to low flows. Lastly, the DEIR (page 2-20) stated that the lack of available labor is a limiting factor in Ranch management. It is clear a major contradiction exists in suggesting the implementation of a labor intensive and unproven strategy where those labor assets to carry out that strategy are not available.

4. The DEIR (pages 2-28) is flawed and inaccurate in stating the steelhead population is large and healthy.

The DEIR only offers surveys for the years 2004 and 2007 for this statement (table 4.3-5). To state that a population of fish is large and healthy flies in the face of the listing of a species as threatened, which the steelhead are in the Big Sur River. These surveys were completed during the time when the illegal pumping was occurring and therefore would be subject to an Endangered Species Act (ESA) lawsuit for illegal "take" as a result of habitat alteration. To further degrade the habitat by even more water diversions from the Big Sur can only exacerbate the health of this listed species.

5. The DEIR is flawed in using historic use of 857 AFA as the basis for evaluating the DEIR.

In 1992 the SWRCB determined that the Ranch only had riparian rights to 25 acres of land. The SWRCB should have issued a Cease and Desist Order for all diversions above that amount because it was not permitted. The Ranch has since continued illegal diversions and added these non-permitted diversions as their basis for " historical pumping rates". These illegal diversions have been so excessive as to flow beyond the Ranch property boundaries and cause erosion damage to other properties and degrade the riparian habitat. The Ranch "historic pumping rates" must undergo a CEQA review, public comment and

evaluated under the "beneficial use" doctrine criteria.

It is clear this DEIR provides evidence the Ranch has pumped water illegally from the Big Sur River for years and has contributed to the potential "take" of a listed species under the ESA and an immediate Cease and Desist Order should be issued together with an investigation conducted into the specifics of ESA violations.

Sincerely;

Dr. Hank Smith
Carmel River Steelhead Association
1314 Josselyn Canyon Road
Monterey, CA 93940

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