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State Water Resources Control Board

December 12, 2009

**Big Sur's El Sur Ranch Water Rights Application No. 30166
Proposes a Titanic Increase in Water Pumping,
Justified Purely by Historic Illegal Pumping
Causing a Colossal Waste of Public Trust Resources.**

- 1. This is a proposal to pump more than 1,600 acre feet of water a year (1,200 af annual average); an amount that would supply water to more than five thousand (5,000) - three bedroom homes on the nearby Monterey Peninsula.¹**

The context to this proposal is that it facilitates a multi-decade attempt to secure water for a second stage attempt to develop a hotel and mansions on the 7,000 acre Pt Sur Ranch. The original hotel / resort proposal on this property was unanimously rejected by the Coastal Commission decades ago.

The second reality is this DEIR goes to great lengths to avoid recognizing that this project would greatly facilitate this development - in spite of its clear legal requirement to do so.

"California law requires environmental consideration be given at the earliest possible stage, even though more detailed environmental review may be necessary later." McQueen v. Board of Directors (1988) 202 Cal.App.3d 1136, 249 Cal.Rptr. 439

- 2. While torture of humans is prohibited by the Geneva Convention and many other international agreements, **tortured logic, tortured data and tortured conclusions** are completely legal under freedom of speech liberties - until they are used in California to support or justify state government actions, such as this proposal, that are false or harmful.**

HOPE respectfully objects to the DEIR as legally inadequate and requests it be re-written with a full evaluation of the potential environmental impacts and re-circulated after incorporating the best available science and clearly identifying all the arguments which have been refuted.

¹ **Monterey Pen. Water Management District tables - One 3 bedroom home uses ~ 0.25 afa (acre feet annually)**

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3. HOPE respectfully objects to the proposed project itself as a **colossal, shameless and baseless overreach** for water and requests that it be denied.
4. **Ambiguity is not allowed in an EIR:** We find the project description is legally inadequate because it obscures the intent, locations and legal categorizations of the proposed water use.

This ambiguity makes our response (and everyone else's) from here on - akin to boxing in the dark - we don't and can't know the full extent of what we are dealing with until the project description is complete and clear.

5. HOPE respectfully requests the actual letters submitted by the California Department of Fish and Game to **each of the applications and amendments** be made a part of this administrative record, any hearings and considered.
6. HOPE finds that **the DEIR did not respond to each concern, raised by Department of Fish and Game in the NOP.**

So now, without wasting space by duplicating them here, HOPE repeats each and every concern and objection made by Department of Fish and Game on every version of this application and respectfully requests that the DEIR discuss and respond in unambiguous detail to each concern and objection raised by the Department of Fish and Game to each of the applications and amendments, and on the Notice of Preparation to this document.

7. Perhaps because of the improperly myopic and legally inadequate scope of the Initial Study when applied to the genuine physical potential for environmental impacts, the DEIR does not adequately recognize the potential for the conversion of the use of the water for development. **Sixteen hundred (1,600) acre feet of water could be used to develop several hotels and hundreds of mansions with massive landscaping having nothing to do with cattle raising.**

This property once had an application to develop a hotel / resort and mansions that was **unanimously rejected** by the state Coastal Commission. That size and type development is not speculative and a reasonable place to start an analysis of potential impacts due to the conversion of the use of the water for development.

8. HOPE respectfully requests the actual Findings of denial by the Coastal Commission and the Commissioner's packets for that proposal, be made a part of this administrative record, any hearings and considered.
9. HOPE respectfully requests the DEIR adequately recognize the potential for the conversion of the use of the water for development.

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10. We cannot help but be amused by the remarkable (Harry Potter) concept that a study this DEIR relies upon shows there is more water in the Big Sur river after El Sur Ranch pumps it - than upstream.² This means that when El Sur Ranch takes water out of the Big Sur river it has the magical ability to increase the water in the river; pumping fresh water out of the ground by El Sur Ranch adds fresh (drinking/potable) water to the Big Sur river !!!

Unless the laws of physics and rules of arithmetic have been repealed, and this were physically true, we should be asking El Sur Ranch to PUMP ALL WATER from the Big Sur river - so that below its pumps - we would have a enchanted fountain able to solve all of California's water supply problems; and of course these study authors should be given medals - from Hogwarts.

Please explain this paradox in plain English - using speculation-free conventional physics and hydrogeology.

10. HOPE respectfully requests the DEIR discuss in numbers and percent how close to "Fully Appropriated" the Big Sur river is - the statement that it is not yet "Fully Appropriated" is inadequate to understand. It appears a large number of upstream appropriators were left out.

11. What year./ date did SWRCB initially find that the water was underflow from the Big Sur river? Pg 1-1 Please revise the footnote.

12. The objectives state "beneficial use of water for irrigation of 267 acres of pasture for cattle grazing"

Please explain in plain English - What is the basis, the evidence and reasoning that cattle grazing is a "beneficial use of water?"

Please explain in plain English - What is the quantitative threshold for when water use here would be "waste" as opposed to beneficial use as both are defined by California law?

13. Cattle Grazing has a broad range of severe environmental impacts --

Grazing has severely degraded, destroyed or at least permanently altered entire ecosystems on hundreds of millions of acres of Western Public and private lands. "No other human activity in the West is as responsible for the decline or loss of species as is livestock production." ("Welfare Ranching", Island Press, 2002)

² "studies showed that river flow below the POD *exceeds* that upstream of the POD" (POD = Point of Diversion or "pumping location") pg 2-18

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HOPE respectfully requests the following impacts from existing and the potential increase in Cattle Grazing be analyzed in this DEIR: (If you need help with references - we can assist. We have included a few references of substantial evidence to one of the following impacts (Decreased Infiltration from grazing) at the end.)

GRAZING'S DIRECT IMPACTS include: Trampling from Grazing, Soil Compaction from Grazing, Grazing caused Vegetation Biomass loss, Grazing caused Riparian Vascular Plant Cover Loss;

SOIL IMPACTS FROM GRAZING include: Grazing caused Litter (Soil cover or "Duff") Loss, Decreased Infiltration from grazing, Increased Water Runoff from Grazing, Doubled Water Erosion from Grazing, Wind Erosion from Vegetation Cover loss from Grazing;

STREAM IMPACTS FROM GRAZING include: Sedimentation Doubling, Grazing caused Streamflow Timing & Flow change, Flash floods increase from plant cover loss from grazing, Stream Temperature Increases from Grazing, Animal Waste Harm to Waterbodies;

WILDLIFE IMPACTS FROM GRAZING include: Endangered & Sensitive Species Harm from Grazing, Raptor prey species habitat reduced by Grazing, Wildlife Deaths due to Grazing Fences, Wildlife Deaths due to Utility Lines, Grazing caused Trout Biomass loss, Fish kills from Cattle Wading;

VEGETATION IMPACTS FROM GRAZING include: Riparian Willow cover loss from Grazing;

GRAZING ECOSYSTEM IMPACTS include: Grazing Induced Desertification, Grazing caused Biotic Productivity loss from Sediment increase, Riparian environment Shade Loss from Grazing, Bird diversity loss caused by vegetation diversity loss from Grazing, Hydraulic Conductivity loss from Grazing, Grazing harming nesting success, Soil Temperature increase from grazing, Fecal coliform increase from grazing, Sedimentation increase from overgrazing affecting stream hydrology, Cryptosporidium increase from grazing.

Essentially none of the impacts were evaluated by the DEIR.

Here we have included a sample of references for just one of the above mentioned impacts - **Grazing caused Decreased Infiltration.**

Decreased Infiltration From Grazing - References

Infiltration rates decrease when grazing intensity increases and causes increasing soil compaction. Data from 25 grazing studies show Infiltration rates decrease approximately 25% on light-to-moderately grazed lands, and approximately 50% on heavily grazed land.

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Smiens, F.E. 1975 Effects of livestock grazing on runoff and erosion. Proceedings of the Watershed Management Symposium. American Society of Civil Engineers, New York, NY. As soil compaction increases, infiltration rates decrease, and surface runoff increases. As grazing intensity increases, water runoff increases.

Gifford, G.F. and R.H. Hawkins. 1978 Hydrologic impact of grazing on infiltration: a critical review. Water Resources Research 14:305- 313. Correlates data from 25 grazing studies. Infiltration rates decrease approximately 25% on light-to-moderately grazed lands, and approximately 50% on heavily grazed land.

Meeuwig, R.O. 1965 Effects of seeding and grazing on infiltration capacity and soil stability of a subalpine range in central Utah. Journal of Range Management 18:173-180.

In fine textured soils, infiltration capacity is influenced primarily by soil bulk density and noncapillary porosity, and secondarily by amount of protective cover afforded by plants, litter, and stone.

Soil stability (i.e. erosion) is influenced primarily by density of protective cover and secondarily by soil bulk density. When bulk density is low, run-off is also low, so protective cover is less important to soil stability. When bulk density is high, run-off is also high, so protective cover is more important. On coarse textured granitic soils, protective cover is almost entirely responsible for controlling run-off and erosion - bulk density has less effect. Grazing reduces infiltration and soil stability. "The differences in infiltration capacity and soil stability between grazed and ungrazed plots demonstrate that even moderate grazing can have pronounced residual effects on these factors. Grazing must be carefully managed so that protective cover is not reduced nor soil compacted to the extent that severe summer storms will cause excessive overland flow and soil loss."

Weltz, M. and M.K. Wood. 1986 Short duration grazing in central New Mexico: Effects on infiltration rates. Journal of Range Management 39(4):365- 368. "Short duration grazing at both sites had no beneficial impact on the hydrologic condition of the range over continuous grazing at similar or different stocking rates after 2 and 3 years....The reduction in grass standing crop and litter load, and the correlated increase in the percentage of bare ground on the short duration system after grazing, was the reason attributed to the significantly reduced infiltration rates of both grazed short duration systems...Exclusion from grazing resulted in higher infiltration rates than any of the grazing treatments.

*** The exclusive, sole, and only reason given for the permit is cattle grazing.** This means that if any part of the permit is granted **the Water permit must be void when the water is no longer used for cattle grazing.**

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Regarding **California Red-legged Frogs** :

The DEIR says "Tadpoles are less mobile than steelhead and would be less able to avoid these areas."
Pg 4.3-34

This doesn't make sense. Please quantify, explain, and re-write.

As the DEIR noted: this is a Federally listed Threatened species as of May 23 1996 (61 FR 25813). Monterey County is well within the range of this species.

Mark Twain became famous when he wrote an account of a jumping frog contest in Calaveras County. Those Celebrated Frogs of Mark Twain's article, the red-legged frogs, as the only large native frogs in California, were undoubtedly the contestants in that event.

This native California frog ("CRLF") is now gone from the Sierras including Calaveras County, but it still hangs on in a very few places. One of those few places is the El Sur Rancho project site.

DRY-LAND TRAVELERS

California Red-Legged frogs (CRLF) have been documented as moving as much as two miles (3.2 km) from aquatic sites "without regard for topography." Federal Register Sept, 11, 2000, pg 54894

(The following is quoted from the US Fish & Wildlife Service - "Guidance on Site assessment and Field surveys for California red-legged frogs, Appendix - California red-legged frog ecology and distribution." Dated February 18, 1997.

"Movement California red-legged frog may move up to 1.6 km (ONE MILE) UP OR DOWN A DRAINAGE and are known to wander throughout riparian woodlands up to several dozen meters from the water. On rainy nights California red-legged frog may ROAM AWAY FROM AQUATIC SITES AS MUCH AS 1.6 KM (ONE MILE). California red-legged frog will often move away from the water after the first winter rains, causing sites where California red-legged frog were easily observed in the summer months to appear devoid of this species."

According to the USFWS Biological Opinion on nearby Rancho San Carlos (dated September 6, 1996) the - "California red-legged frog could inhabit any aquatic and riparian areas within the range of the species and also any landscape features near riparian areas that provide cover and moisture."

"Any aquatic and riparian areas within the range of the species"

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The Federal Register ESA Listing of the Frog expands on and gives additional examples of Frog habitat. "California red-legged frogs have been found up to 30 m (98 feet) from water in adjacent dense riparian vegetation for up to 77 days."

"Estivation habitat is essential for the survival of California red-legged frogs within a watershed."

"Estivation habitat for the California red-legged frog is potentially all aquatic and riparian areas within the range of the species and includes any landscape features that provide cover and moisture during the dry season within 300 feet of a riparian area. This could include boulders or rocks and organic debris such as downed trees or logs; industrial debris; and agricultural features, such as drains, watering troughs, spring boxes, abandoned sheds, or hay-ricks. Incised stream channels with portions narrower than 18 inches and depths greater than 18 inches may also provide estivation habitat." (From the Federal Register for Thursday, May 23, 1996)

THESE FROGS CAN LIVE WITHOUT PONDS OR WETLANDS

A US-FWS letter to Monterey County in Mar 1998 on the "September Ranch" FEIR states "Concluding the CRLF does not occur on the project site because the site does not have ponds or other wetland habitat with riparian vegetation is erroneous because this species exhibits complex temporal variations in behavior and habitat use."

CALIFORNIA RED-LEGGED FROG HABITAT MAP NEEDED

Since the California Red-Legged Frog can range up to a mile in any direction from aquatic sites that makes a circle two miles in diameter as potential habitat for the frog from each known aquatic location within its range.

Please prepare a Meaningful Map of all Potential Habitat

Since California Red-Legged frog can "roam away from aquatic sites as much as 1.6 km", a complete map of potential California Red-Legged frog habitat for the project site is needed to determine which areas potentially contain California Red-legged frog habitat.

POTENTIAL PREDATOR INCREASE FROM FLOODING LAND

Bullfrogs are predators of the California Red-Legged Frog. As weak swimmers bullfrogs are susceptible to being washed out of a river into the ocean as opposed to the California Red-Legged Frog which can avoid high natural, temporary flows by leaving the stream. Other CRLF predators include crayfish and centrarchid fishes as well as herons, egrets, opossums and raccoons. "Trash left during or after project activities could attract predators such as raccoons to work sites which in turn could harass or prey on the listed species." US-FWS Biological Opinion on Arroyo Seco Bridge Replacement. April 27 1999

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This proposal would flood land and increase the land where water is used - perhaps dramatically. That flooding and increased use would increase the amount Bullfrog predators of this endangered species.

HOPE respectfully requests this potentially significant impact to the California Red-Legged frogs endangered species be evaluated. Please keep in mind CEQA section 15065 requires a finding of significant impact if there is a potential loss of a single individual, or the loss of as little as a quarter of an acre of habitat, of a listed species.

M.M. Homeowners vs San Buenaventura Cty. Etc. 165 Cal.App.3d 357, 212 Cal.Rptr. 127 (Cal.App.2 Dist. 1985)

Perhaps stronger, California's Coastal Act requires avoidance of any activity that would potentially cause the loss of a single individual of a listed species.

Diet "Invertebrates are the most common food item for adults. Larvae probably eat algae. Vertebrates, such as the Pacific Tree frogs and California mice (*peromyscus californicus*), represented over half the prey mass eaten by larger frogs."

Hazards "Accidental spills of hazardous materials or careless fueling or oiling of vehicles or equipment could degrade water quality or upland habitat to a degree where CRLF are adversely affected or killed." The contamination of the stream by wet concrete could cause potential skin and respiratory system irritation in CRLFs. Work in live streams or in floodplains could cause unusually high levels of siltation downstream. This siltation could alter the quality of habitat downstream and preclude its use by CRLF." US-FWS Biological Opinion on Arroyo Seco Bridge Replacement. April 27 1999

Nitrite and Nitrate hazards Oregon State University researchers "have named the nitrogen based compounds found in fertilizers as likely suspects in the rapid decline of at least one frog species in the Pacific Northwest."

The maximum recommended nitrite limit for drinking water, 1 milligram per liter, was sufficient to kill well over half of the Oregon spotted frog tadpoles and about half of the northwestern salamander tadpoles.

Nitrate compounds can be readily converted to nitrites through a number of environmental processes including bacteria.

Please Consult with Fish and Wildlife Service and the California Dept of Fish and Game for each of these topics.

Pesticides in Runoff:

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We cannot find where existing or potential pesticide use is recognized, let alone described - except for one tiny anecdotal mention.

Cattle grazing typically uses hundreds of pounds of pesticides a year to narrow the crops the cattle feed upon, dozens of books have been written about how Pesticides contaminate runoff water, US -EPA has an entire Division dedicated to this subject - yet according to this DEIR this proposal would have ZERO runoff containing pesticides.

Please explain this.

As mentioned above HOPE respectfully objects to the DEIR as legally (and scientifically) inadequate and requests it be **re-circulated** after it is re-written with the best available scientific knowledge and a full evaluation of the potential environmental impacts as clearly required by law.

To Conclude --

This property once had an application to develop a hotel / resort and mansions that was **unanimously rejected by the California Coastal Commission.**

Independent of how gracious, pleasant and personable as the applicant may be as a person, that was a colossal, shameless overreach.

The unanimous rejection by the state - is the same result that should be reached for this new version of a proposed colossal, shameless overreach.

With all due respect,

David Dilworth for the Board of Trustees

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