



State Water Resources Control Board

Winston H. Hickox
Secretary for
Environmental
Protection

Division of Water Rights
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Gray Davis
Governor

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DEC 7 2000
NACI Water Services Div
Santa Rosa, CA

DEC 27 2000

Mr. James J. Hill
El Sur Ranch
P.O. Box 1588
Monterey, CA 93942

DFG-T-24

WATER RIGHT APPLICATION 30166 OF JAMES HILL (EL SUR RANCH) TO APPROPRIATE WATER FROM BIG SUR RIVER IN MONTEREY COUNTY

Dear Mr. Hill:

On July 27, 1992, you filed water right application 30166 in order to seek a right to appropriate water from the Big Sur River. On March 25, 1994, the Division of Water Rights (Division) noticed your application for public review and the California Department of Parks and Recreation, California Department of Fish and Game (DFG), and the California Sportfishing Protection Alliance filed protests against your application. In an attempt to resolve the concerns raised in the protests, you and the protestants agreed to evaluate whether or not your diversion wells were hydraulically connected to the Big Sur River. Resolution of the protests would depend, in part, on the results of the hydrologic study.

On April 29, 1999, the Division received the El Sur Ranch Hydrologic Investigation (Report) prepared by Jones and Stokes Associates. The Report concluded that water pumped by the El Sur Ranch wells is induced river seepage. Therefore, your wells are hydrologically connected to the Big Sur River. Thus, the protests remain unresolved and the Division will continue to process your application in accordance with the Water Code, the California Environmental Quality Act (CEQA), and other applicable laws.

Water right application 30166 seeks a right to directly divert 5.84 cubic feet per second (cfs) from January 1 through December 31 of each year for the purpose of irrigating 292 acres of pasture. The protests and a preliminary environmental review of this application indicate that several sensitive species may be present at the project site and that your diversion could adversely affect steelhead, California red-legged frogs, tidewater goby, and other aquatic organisms in the lower stretch of the river and the lagoon. In 1994, Biosystems submitted to the Division a biological resource study that indicates steelhead are present in the area of your project. In August of 1997, the National Marine Fisheries Service (NMFS) listed steelhead as a threatened species and in May of 1996, the U.S. Fish and Wildlife Service listed the California red-legged frog as a threatened species. The Division is concerned that diversion of water throughout the year, especially during the summer period, could have a significant impact on these and other aquatic species.

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A hearing will be scheduled for the State Water Resources Control Board (SWRCB) to receive evidence on whether or not to approve your application. Prior to scheduling a hearing, the Division will require that the appropriate environmental documentation be prepared pursuant to CEQA, including a biological study developed in consultation with DFG and NMFS. Any study should evaluate potential effects on steelhead, the California red-legged frogs, tidewater goby, and other resources identified in the protests. If the studies indicate that the project will have a significant impact on the biological resources, the Division will have to prepare an Environmental Impact Report (EIR). The costs of any studies and, if necessary, preparation of the EIR, will be your responsibility.

As an alternative to the possible preparation of an EIR, you may wish to consider restricting your season of diversion and limiting the rate of diversion to reduce any impacts of your project on fishery resources. The Division is currently evaluating diversion methods and criteria that would reduce the significant impacts of water diversions on fishery resources. The primary method, developed in consultation with NMFS, DFG, and other fishery experts is to limit the season of diversion to a period of December 15 through March 31 and to restrict the maximum rate of diversion to 3 cfs or less. If you similarly elect to restrict your season and rate of diversion, thereby reducing any of the project's potential adverse impacts to less than significant, your project may qualify for either a negative declaration or mitigated negative declaration. Additionally, modification to your project, as proposed, may facilitate protest resolution.

In conclusion, the protests against your application that allege injury to biological resources in the Big Sur River remain unresolved and the SWRCB will hold a hearing on your application. You must complete biological surveys to determine potential impacts to these resources prior to the SWRCB conducting the hearing. Since there is an active complaint against your diversion and use of water, Division staff requests that you initiate biological surveys, or at least enter into contracts to complete the studies in a timely manner, within 60 days of the date of this letter. If you fail to take action within this period, Division staff will recommend investigation and possible enforcement action against you for any diversion of water. If you have any questions regarding this letter, I can be reached at (916) 341-5358.

Sincerely,



Lewis Moeller, Chief
Hearing Unit

cc: Janet K. Goldsmith
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(Continued next page.)

Mr. James J. Hill

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cc: (Continuation page.)

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