

## DEPARTMENT OF FISH AND GAME

## OFFICE OF THE GENERAL COUNSEL

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Sacramento, CA 95814  
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(916) 654-3821



September 18, 2006

Ms. Victoria Whitney, Chief  
Division of Water Rights  
State Water Resources Control Board  
P. O. Box 2000  
Sacramento, California 95812-2000

Re: CDFG Protests To Water-Right Applications 30325, 30326, 31043  
and 31047

Dear Ms. Whitney:

The California Department of Fish and Game ("CDFG") has executed an MOU with Tejon Ranchcorp ("Tejon") that potentially resolves all of the issues associated with the protests that CDFG filed to Tejon's water-right Applications 30325-30326 and 31043, and 31047. A copy of this MOU is enclosed. CDFG requests that the bypass requirement specified in paragraph 5.a of this MOU be included in the permit that the SWRCB issues on Application 30325, and that the bypass requirement specified in paragraph 5.b of this MOU is included in the permit that the SWRCB issues on Application 30326. CDFG also requests that paragraphs 1.b, 2 and 3 of this MOU be included in both permits, and that the following term be included in both permits:

Permittee is signatory to the September 14, 2006 Memorandum of Understanding (MOU) between permittee and the California Department of Fish and Game, which places additional conditions on the operation of the project described in this permit. The State Water Resources Control Board acknowledges the existence of the MOU, but makes no findings as to the content of the MOU and, therefore, will not enforce the conditions in the MOU as a condition of this permit, except for the provisions of the MOU that are expressly stated in this permit. Enforceable terms defining the scope of the permit are listed independently in the permit and may not be included in the MOU.

CDFG has concluded that, with this MOU and these permit terms in place, Tejon's diversions of water from Tejon Creek and El Paso Creek pursuant to water-right permits issued on these applications will not have any unreasonable impacts on any of the public-trust resources in these creeks. Specifically, CDFG has concluded that, with this MOU and these permit terms in place, Tejon's diversions of water from these creeks under these permits will not have any unreasonable impacts on the riparian vegetation along these creeks, or on any Tehachapi slender salamanders (*Batrachoseps stebbinsi*) or yellow-blotched salamanders (*Ensatina eschscholtzii*)

*croceater*) that may be present in the vicinities of these creeks.

This letter therefore requests that, conditioned on this MOU being in effect and the above-specified permit terms being included, you dismiss CDFG's protests to water-right Applications 30325, 30326, 31043 and 31047 and issue water-right permits to Tejon on those applications. Thereafter, CDFG believes the Board's scheduled hearing would no longer be necessary. However, notwithstanding resolution of CDFG's issues on these water rights applications, CDFG respectfully notes that it is within the Board's discretion to still proceed to a hearing. Should the Board choose to do so, CDFG is including a Notice of Intent to Appear with this letter in order to preserve its right to appear. Paragraph 7 of the MOU allows Tejon to terminate the MOU if there is a delay in issuing the permits or if the permit conditions differ substantially from those issued on permits 30327-30329, 31044-46, and 31048. Therefore, CDFG's notice reflects that it could appear in one of several different capacities, from "case-in-chief" to "policy statement only," depending on the need to support incorporation of the above-specified MOU permit terms and reference or, if the MOU terminates before the hearing, to resolve CDFG issues which are still outstanding.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Tina R. Cannon", with a long horizontal flourish extending to the right.

**TINA R. CANNON**  
Staff Counsel

Encl.

## **MEMORANDUM OF UNDERSTANDING**

This Memorandum is made as of September 14, 2006, by and between the California Department of Fish and Game ("CDFG") and Tejon Ranchcorp, a California corporation ("Tejon").

WHEREAS, Tejon filed with the State Water Resources Control Board ("SWRCB") applications, identified as Application Nos. 30325-30329 and 31043-31048, for water-right permits for diversion and use of waters of El Paso Creek, Tunis Creek, Tecuya Creek, Liveoak Creek, Pastoria Creek, Tejon Creek and Grapevine Creek.

WHEREAS, CDFG filed protests to Applications 30325-30327 and 31043-31048.

WHEREAS, the SWRCB cancelled CDFG's protests to Applications 30327, 31044-31046 and 31048, and issued water-right permits on Applications 30327-30329, 31044-31046 and 31048.

WHEREAS, CDFG's protests to Applications 30325-30326, 31043 and 31047 still are pending.

WHEREAS, CDFG and Tejon now have resolved CDFG's protests to Applications 30325-30326, 31043 and 31047, according to the terms of this MOU.

NOW, THEREFORE, CDFG and Tejon agree to the following:

1. Facilities:

a. Tejon shall not add any new diversion points, dams or other facilities, or make any material expansions to existing facilities, that would enable Tejon to capture the flood waters of Tejon and El Paso Creeks which historically flowed over the surfaces of lands in the White Wolf

basin onto lands in the main Kern County basin not overlying the White Wolf basin. Tejon shall not divert or use any such flood waters, but, rather, shall let such flood waters flow past Tejon's facilities, regardless of whether or not Tejon has the ability to divert the flood waters.

b. Existing diversion points, dams, structures, pipelines, ditches and other facilities on Tejon and El Paso Creeks at the points of diversion described in paragraphs 5.a and 5.b below shall not be materially improved or enhanced. Repairs or replacements of these facilities shall not deviate from the existing design, placement and materials.

2. Temporary Cattle Exclusion Zones For Riparian Vegetation Regeneration: Tejon will set and maintain fencing as necessary to maintain two cattle exclusion zones, each approximately 100 feet wide by 200 feet long, in the Tejon Creek Canyon in the vicinity of the point of diversion from Tejon Creek that is described in water-right Application No. 30325, at locations and in configurations agreed to by Tejon and CDFG. From time to time, after new vegetation has become established in these zones, Tejon and CDFG may agree to move these cattle exclusion zones to other locations in the Tejon Creek Canyon in the vicinity of this point of diversion.

3. Photo Documentation Of Temporary Cattle Exclusion Zones: Tejon will take photographs of the temporary cattle exclusion zones described in paragraph 2 above to document the riparian vegetation regeneration that has occurred in these zones, and will provide copies of these photographs, with logs listing the dates and locations of the photographs, to CDFG annually.

4. Fish and Game Code Section 1600 Agreement: Separate from this MOU, CDFG and Tejon will execute an agreement pursuant to California Fish and Game Code sections 1600-1616 regarding Tejon's construction of new facilities and maintenance of existing and new facilities

for Tejon's diversions from El Paso Creek, Tunis Creek, Tecuya Creek, Liveoak Creek, Pastoria Creek, Tejon Creek and Grapevine Creek. This agreement will not contain any requirements for bypasses of creekflows at any of these facilities beyond those established in this MOU.

5. Maintenance Of Bypass Flows In Tejon and El Paso Creeks:

a. Tejon will maintain its diversion facilities on Tejon Creek at the point of diversion that is described in Application 30325 in a manner so that flows of at least 15 gallons per minute, or the natural flow in the creek immediately upstream of the diversion, whichever is less, will bypass the diversion facilities and flow down Tejon Creek past these facilities. Tejon will monitor bypass flows and leakage from this point of diversion monthly for one normal water year. Should leakage flows from this point of diversion exceed 15 gallons per minute, then the minimum bypass flow specified in this paragraph shall be changed from 15 gallons per minute to the new maximum leakage flow, or the natural flow in the creek immediately upstream of the diversion, whichever is less.

b. Tejon will maintain its diversion facilities on El Paso Creek at the highest point of diversion (referred to as "POD # 4 in the environmental impact report for this project, which has California Coordinates 551800 N, 1786300 E, California Stateplane, Zone 5, NAD 27, in feet) that is described in Application 30326 in a manner so that flows of at least 5 gallons per minute, or the natural flow in the creek immediately upstream of the diversion, whichever is less, will bypass the diversion facilities and flow down El Paso Creek past these facilities. Tejon will monitor bypass flows and leakage from this point of diversion monthly for one normal water year. Should leakage flows from this point of diversion exceed 5 gallons per minute, then the minimum bypass flow specified in this

paragraph shall be changed from 5 gallons per minute to the new maximum leakage flow, or the natural flow in the creek immediately upstream of the diversion, whichever is less.

c. Tejon will not be required to maintain bypass flows at any of its other diversion facilities that are subject to the water-right applications and permits described in this MOU.

6. Dismissal Of CDFG Protests: Promptly after execution of this MOU, CDFG will send a letter to the SWRCB, with a copy to Tejon, substantially in the form of the attached Exhibit A, asking the SWRCB to dismiss CDFG's protests to Applications 30325-30326, 31043 and 31047, and to issue water-right permits to Tejon on these applications.

7. SWRCB Issuance Of Permits To Tejon: CDFG and Tejon contemplate that, promptly after execution of this MOU and delivery of the letter described in paragraph 6 above, the SWRCB will issue permits to Tejon on Applications 30325-30326, 31043 and 31048, substantially in the form of the permits that the SWRCB recently issued to Tejon on Applications 30327-30329, 31044-31046 and 31048. If the SWRCB does not promptly issue permits on Applications 30325-30326, 31043 and 31048, or if the SWRCB includes conditions in these permits that are substantially different from the conditions that are in the permits that the SWRCB recently issued on Applications 30327-30329, 31044-31046 and 31048, then Tejon, in its sole discretion, may terminate this MOU by promptly notifying CDFG in writing of such termination. If Tejon terminates this MOU, then CDFG may withdraw the letter to the SWRCB that is described in paragraph 6 above.

8. Successors and Assigns: This MOU shall be binding upon and inure to the benefit of CDFG and Tejon, and their respective successors and assigns.

9. Captions: All captions to the provisions of this MOU are solely for the convenience of

the parties, and shall not be used to interpret or determine the meaning of its provisions.

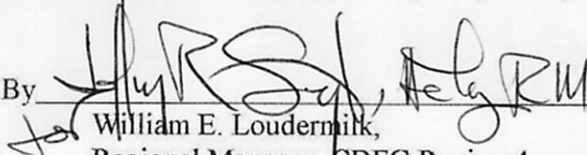
10. Construction: The normal rule of construction to the effect that any ambiguities or uncertainties are to be resolved against the drafting party shall not be employed in any interpretation or construction of this MOU.

11. Authorized Representatives: Each person executing this MOU individually warrants and represents to the other party that he or she has the full power and authority to execute this MOU on behalf of the entity he or she is signing on behalf of and to bind said entity to the terms hereof.

12. Counterparts: The parties may execute this MOU in counterparts.

IN WITNESS WHEREOF, the parties hereto have executed this MOU on the date first above written.

CALIFORNIA DEPARTMENT OF FISH AND GAME

By   
William E. Loudermilk,  
Regional Manager, CDFG Region 4

TEJON RANCHCORP

By   
Dennis Atkinson, Vice President

**EXHIBIT A**

(to be run in final on CDFG letterhead)  
September 14, 2006

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Division of Water Rights  
State Water Resources Control Board  
P. O. Box 2000  
Sacramento, California 95812-2000

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Applications 30325-30326, 31043 and 31047 and issue water-right permits to Tejon on those applications.

Sincerely,

William E. Loudermilk,  
Regional Manager, CDFG Region 4

Encl.