



DEPARTMENT OF FISH AND GAME

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August 8, 2008

Martha Miller
County of San Luis Obispo
County Government Center, Room 310
San Luis Obispo, California 93408

Subject: Revised Draft Environmental Impact Report for the Santa Margarita Ranch
Agricultural Subdivision and Future Development Project (SCH No. 2004111112)

Dear Ms. Martha Miller:

The Department of Fish and Game (Department) submitted to the County of San Luis Obispo (County) a March 28, 2008 letter, which provided comments on the subject environmental document pursuant to the provisions of the California Environmental Quality Act (CEQA). This letter is submitted for consideration of the Planning Commission reemphasizing the Department's concerns regarding water availability for the proposed Project. Specific concerns are regarding potential impacts to streams designated by the Federal Endangered Species Act as critical habitat for the Federally threatened, and State species of special concern, steelhead - south central coast evolutionary significant unit (ESU) (*Oncorhynchus mykiss irideus*) that could occur as a result of water diversion and use by the proposed Project.

Trustee Agency Authority: The Department, as a Trustee Agency, has the responsibility under CEQA for commenting on projects that could impact plant, fish and wildlife, and habitat necessary for biologically sustainable populations of those species. Certain fish and wildlife are reliant upon aquatic ecosystems, which in turn are reliant upon adequate flows of water. The Department, therefore, has a material interest in assuring that adequate water flows within streams for the protection, maintenance and proper stewardship of those resources. The Department provides, as available, biological expertise to review and comment on environmental documents and impacts arising from Project activities. As Trustee Agency, the Department is consulted by the State Water Resources Control Board-Division of Water Rights (SWRCB) during the water rights permit application process to provide recommendations for appropriate instream flows designed to protect fish and wildlife resources prior to appropriation of the State's water resources.

Water Right Complaint: The Department recently received a copy of a complaint issued to the SWRCB by North County Watch that alleges, among other things, wells in the planned area of development are pumping underflow from Rinconada Creek, Yerba Buena Creek, Santa Margarita Creek, and Trout Creek, streams that are tributary to the Salinas River, and

storing the extracted water in excess of authorized time limits, without water rights to do so. The complaint also alleges the excessive pumping and water storage has caused sections of Trout Creek to run dry in its lower reaches.

It has not yet been determined which existing water wells on Santa Margarita Ranch are pumping groundwater or diverting underflow from Trout Creek and the other tributaries to the Salinas River. It also is not known whether the rate of diversion or quantity diverted to storage requires diverters on these streams to pursue the water rights process with the SWRCB. However, prior to any additional water diversions being approved and put into operation in association with the proposed Project, regardless of whether groundwater or stream underflow are the source, existing and proposed wells should undergo full disclosure (i.e., source, rates of diversion, volume and duration of storage, etc.) through the environmental review process (i.e., CEQA) as appropriate. Then, it may be determined which wells require discretionary action by the SWRCB, and in consultation with the Department to provide recommendations for appropriate instream flows designed to protect fish and wildlife resources.

Steelhead Documented Occurrences in Trout Creek and Other Tributaries to the Salinas River: As discussed above, Trout Creek and other Salinas River tributaries are designated as critical habitat for steelhead trout under the Federal Endangered Species Act. Occurrences of steelhead in these streams have been documented by research scientists, and also by Department fisheries staff. Associate Fisheries Biologist Robert Tibstra and Fish Habitat Specialist Dave Highland, identified multiple year classes of steelhead during surveys performed in Trout Creek during 2008. This indicates steelhead spawning is occurring in Trout Creek (Tibstra, pers. comm.).

A study by Lisa C. Thompson et.al., completed in July and August 2006, documented steelhead during snorkel surveys in multiple sections of Salinas River tributaries. Steelhead were observed at two locations in Atascadero Creek, three sites on Tassajara Creek and Santa Margarita Creek, and at four sites on Trout Creek from its upper to lower reaches (Thompson et.al., 2006). These documented occurrences point out that reduced instream flow, and potential dewatering of sections of these streams may adversely affect federally designated critical habitat, and may result in "take" of the species.

Steelhead Life History: Steelhead are an anadromous form of rainbow trout, meaning they spawn in freshwater streams and spend the majority of their adult lives in the ocean. Steelhead exhibit a variety of life history patterns, but generally adhere to the following sequence. Adults migrate from the ocean to natal freshwater streams to spawn where the gravel substrate and fast-flowing oxygen-rich waters provide for proper egg development. After the eggs hatch, they develop as alevins within the gravel interstices until they emerge as fry. Fry develop into juveniles while feeding and seeking cover in rearing areas, and

eventually begin their outmigration to the ocean. Before completely developing into adults, they remain in an estuarine environment as they undergo smoltification; a process whereby physiological changes occur allowing them to tolerate increases in salinity before venturing out into the ocean.

The steelhead's migratory behavior is cued by changes in flow regime from the watersheds of their natal streams. High winter flows during the rainy season allow adult steelhead to reach spawning locations higher up in the watershed. These higher instream flows also provide greater coverage of the gravel substrate, thereby increasing the area of potential spawning and encompass stream-side vegetation, which provides cover for juveniles as they grow and develop. Juvenile outmigration requires stream flows of an adequate volume to carry them along on their journey back to the ocean. When instream flow is insufficient for outmigration, some adults and juveniles must holdover in isolated pools until the following winter rainy season. During drought years there must be a minimum amount of flow to provide these places of refuge where steelhead can persist until the seasonal flows increase again the following winter.

Water Availability: The proposed water source for the Santa Margarita Ranch Agricultural Subdivision and Future Development Project would be pumped groundwater and diverted underflow from Rinconada Creek, Santa Margarita Creek, Yerba Buena Creek, and Trout Creek, streams tributary to the Salinas River. A hydrogeological study (Hopkins Groundwater Consultants, Inc., June 2006) prepared for the Project shows an aquifer storage depletion corresponding to increased water production from January 2000 to January 2007. The study projects a 125 to 225 percent increase of groundwater use to meet the increased demands associated with the Project.

While the study does not suggest the aquifer system beneath the Project area is in overdraft, available data point to a direct response by decreases in groundwater elevation to increased pumping stress (Hopkins Groundwater Consultants, Inc., June 2006). Increased water demand from the proposed Project would further lower groundwater elevation, which may in turn reduce surface water flow in area streams tributary to the Salinas River. The County should consider this prior to approving the Revised Draft Environmental Impact Report (RDEIR) as an indication of potentially serious long-term impacts to surface water availability for fish and wildlife.

Of more immediate concern are wells located directly adjacent to and potentially pumping underflow from tributaries to the Salinas River. This water demand could have an immediate detrimental effect on habitat availability for steelhead. In order to properly assess the cumulative effects of the existing and proposed stream diversions, instream flow analyses should be conducted to analyze the effects of water use from the proposed Project.

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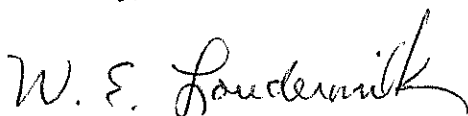
Protecting Instream Flows in Central Coast Streams: The Department determines adequacy of instream flows and prescribes appropriate instream flows in a regulatory capacity, through enforcement of Fish and Game Code §5937 which requires sufficient water to bypass stream diversions to keep fish in good condition downstream. As Trustee Agency, the Department recommends instream flow studies and makes flow recommendations to the SWRCB as part of the water rights process. Until existing and proposed wells within the proposed Project area disclose sources of diversion, rates of diversion, volume and duration of storage, etc., it cannot be determined which wells require discretionary action by the SWRCB. Once SWRCB jurisdiction is determined, the Department will provide recommendations to the SWRCB for appropriate instream flow studies (i.e., Physical Habitat Simulation studies) to determine what flow volumes and rates must bypass stream diversions during various times of year to provide physical habitat requirements to support all life stages of steelhead.

The Department recommends that the County not certify the RDEIR until appropriate instream flow studies can be completed so that recommendations for adequate instream flows can be developed.

The National Oceanic and Atmospheric Administration (NOAA) – National Marine Fisheries Service (NMFS) administers the Federal Endangered Species Act where anadromous fish are concerned, and should be consulted to determine the proper course of action to eliminate the immediate threat to steelhead in Trout Creek, and begin working toward effective mitigation on the affected tributaries to the Salinas River and restore fish habitat. Until that process is completed, well operators within Santa Margarita Ranch should reduce volumes and rates of diversion until adequate instream flows can be established to provide suitable habitat for steelhead to persist in a healthy condition to ensure they complete their life cycles.

If you have any questions regarding the above discussion, please contact Brian Erlandsen, Environmental Scientist, Water Rights Program, at the above letterhead address or by telephone at (559) 243-4014, extension 220.

Sincerely,

A handwritten signature in black ink that reads "W. E. Loudermilk". The signature is written in a cursive style with a large, sweeping initial "W".

W.E. Loudermilk, Regional Manager
Central Region