



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Southwest Region
777 Sonoma Ave., Room 325
Santa Rosa, California 95404-4731

August 25, 2010

In response, refer to:
SWR-F SWR3:DB

Doug Filliponi
Santa Margarita Ranch LLC
22720 El Camino Real, Suite A1
Santa Margarita, California 93453

Dear Mr. Filliponi:

NOAA's National Marine Fisheries Service (NMFS) - Protected Resources Division and Office for Law Enforcement are concerned with the ongoing withdrawal of subterranean flows from Santa Margarita Ranch's (SMR) groundwater wells and the potential impacts to surface flows in Trout, Santa Margarita, and Yerba Buena creeks in San Luis Obispo County, California. These creeks support Federally-threatened South-Central California Coast (S-CCC) steelhead. The creeks are also designated critical habitat for S-CCC steelhead.

Section 9 of the Endangered Species Act (ESA) and Federal regulation pursuant to section 4(d) of the ESA prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harm is further defined by NMFS as an act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, or sheltering.

The protective regulations for S-CCC steelhead describe certain activities that are most likely to cause "harm" resulting in a violation of the ESA. These activities, which may pertain to the wells at SMR include, in part:

"Removing water or otherwise altering streamflow when it significantly impairs spawning, migration, feeding, or other essential behavioral patterns . . ."

On March 17, 2010, we requested information from you to ensure SMR's compliance with the Federal ESA of 1973, as amended. Your responses to date are inadequate for such a determination.



The State Water Resources Control Board reports that a total of eight SMR wells (3D2, 34M, 34C, 216, 16Q, 8Q, 17M1, and 18H1) withdraw from subterranean streamflow. These wells are subject to State Board permitting authority and may have limitations to their use. In order for NMFS to determine all impacts to S-CCC steelhead and their habitat, we request the following information regarding the eight wells:

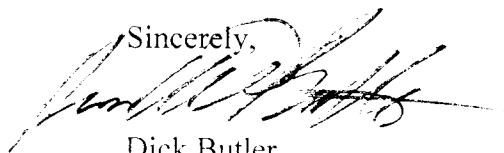
1. SMR's licensed and pending water rights season of diversion with specific dates (month, date, time), rate of diversion including instantaneous rate of diversion, duration, and places of use;
2. SMR's permitted annual volume of diversion in acre-feet;
3. the use of storage facilities:
 - a. re-diversion schedule and
 - b. reservoir locations; and
4. a comprehensive schematic of the water infrastructure operated and maintained by SMR including wells (type and size), pipelines (size and location), reservoirs (type, size, permit number), and delivery points.

The requested information is necessary to conduct an accurate effects analysis impacts to Federally-protected species. The information will assist us in determining annual and long-term changes in groundwater storage and the impacts to surface flows, estimate rates of recharge, determine direction and gradient of groundwater flow, and how the aquifer system works in conjunction with surface flows. Failure to respond to our request within 45 days of receipt of this letter will require NMFS Office of Law Enforcement to continue its investigation.

We strongly recommend that you have a detailed hydrological study completed for your wells at SMR to determine groundwater/surface water interactions and the effects to flows in Trout, Santa Margarita, and Yerba Buena creeks. Results from such a study should provide information necessary to determine the "interconnectedness" of the creeks and wells and, if necessary, suggest reasonable plans for to preserve critical steelhead habitat. If information indicates a likely connection between operation of the wells and reduced flows in the creeks, further consultation with NMFS and other resource agencies would need to be conducted. If the proposed project will adversely affect S-CCC steelhead, the Santa Margarita Ranch will need ESA take exemption or risk being in violation of the ESA. The mechanism to obtain an exemption for an otherwise legal activity would be through either ESA section 7 or section 10(a)(1)(B) (development of a habitat conservation plan (HCP)). Failure to obtain an exemption could result in significant fines, imprisonment, or injunctive relief.

Thank you for your cooperation in this matter. If you have any questions or comments concerning this letter, please contact Devin Best at (707) 578-8553 or via email at devin.best@noaa.gov.

Sincerely,



Dick Butler
North Central Coast Office Supervisor
Protected Resource Division

cc: Marc Cline, Bill Struble, NOAA OLE
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Chris Diel, USFWS, Ventura Office
/ Susan Harvey, North County Watch, Templeton, California
Chuck Rich, State Water Resource Control Board
Harley Voss, San Luis Obispo County Code Enforcement