



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Ventura Fish and Wildlife Office  
2493 Portola Road, Suite B  
Ventura, California 93003



IN REPLY REFER TO:  
81440-2010-CPA-0094

April 28, 2010

Charles A. Rich, Chief  
State Water Resources Control Board  
Division of Water Rights  
Post Office Box 2000  
Sacramento, California 95812-2000

Subject: Water Right Complaint Regarding Diversion of Groundwater on the Santa Margarita Ranch in the Upper Salinas River Watershed, San Luis Obispo County, California

Dear Mr. Rich:

This letter is in response to correspondence, received in our office on April 20, 2010 by electronic mail, requesting comments on the investigation of the water right complaint regarding the diversion of groundwater on the Santa Margarita Ranch in the Upper Salinas River Watershed, San Luis Obispo County. The deadline for comments was April 23, 2010; however, the Service did not receive the solicitation for comments until April 20, 2010. The State Water Resources Control Board (Water Board) has subsequently extended the time period for comment submittal until April 30, 2010.

The Water Board recently received several complaints against proposed diversions of water by the Santa Margarita Ranch (Ranch) from the California Sportfishing Protection Alliance (CSPA), the California Department of Fish and Game (CDFG), and the Environmental Center of San Luis Obispo (ECOSLO). The complainants allege that proposed development of the Ranch has the potential to significantly reduce streamflows in Santa Margarita Creek, Yerba Buena Creek, Trout Creek, and Rinconada Creek, resulting in adverse impacts to public trust resources. A second issue expressed in the complaints filed by the CDFG and ECOSLO is that any increased pumping demands of the Ranch will result in overdraft of the groundwater aquifer. In addition to the formal complaints, a number of local groups and individual parties have expressed concern regarding the proposed diversion of water by the Ranch.

The Ranch encompasses approximately 13,800 acres in the Salinas River watershed. Four major creeks occur on the Ranch: Santa Margarita, Yerba Buena, Trout, and Rinconada Creek. The Ranch holds two appropriative water right permits from the Water Board: license 12456 authorizing storage of 17.7 acre-feet of water a year to a reservoir located on an unnamed tributary to Trout Creek and license 12430 authorizing storage of 45 acre-feet a year in a

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reservoir on an unnamed tributary to the Santa Margarita Creek. These licenses authorize the use of the water collected in both reservoirs for stockwatering, wildlife enhancement, and fire protection only. This water currently cannot be used for irrigation and can only be diverted to storage from January 1 to April 1 of each year.

During a Water Board site visit to the Ranch, there were at least four ponds discovered onsite which appear to lack water rights. As of 2000, there were also 22 water wells within the Ranch and plans for future vineyard development within at the upper Trout Creek Watershed Area, Five Mile Field within the Rinconada Watershed Area, and Santa Margarita/Yerba Buena Watershed. Additional wells are planned for this area to meet the future demand of these vineyards. Nine of these wells appear to be drawing from a subterranean stream, while the other 13 appear to be tapping percolating groundwater. A report issued in 2000 by the Water Board stated that "based on the site visit and review of the available supporting documentation, Complaint Unit staff believe that withdrawals of water from the alluvial wells on the Ranch would likely result in reduced stream flows in Santa Margarita Creek, Yerba Buena Creek, and Trout Creek. Pumping from the wells within a subterranean stream would likely result in increased recharge of water from the streams into the alluvium, thereby reducing surface flows. Additionally, pumping from the alluvial aquifers may also deplete the streams by capturing groundwater that would otherwise discharge into surface channels."

The U.S. Fish and Wildlife Service's (Service) responsibilities include administering the Endangered Species Act of 1973, as amended (Act), including sections 7, 9, and 10. Section 9 of the Act prohibits the taking of any federally listed endangered or threatened species. Section 3(18) of the Act defines take to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Service regulations (50 CFR 17.3) define harm to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. Harassment is defined by the Service as an intentional or negligent action that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. The Act provides for civil and criminal penalties for the unlawful taking of listed species. Exemptions to the prohibitions against take may be obtained through coordination with the Service in two ways. If a project is to be funded, authorized, or carried out by a Federal agency and may affect a listed species, the Federal agency must consult with the Service, pursuant to section 7(a)(2) of the Act. If a proposed project does not involve a Federal agency but may result in the take of a listed animal species, the project proponent should apply to the Service for an incidental take permit, pursuant to section 10(a)(1)(B) of the Act.

To assist the Water Board in investigating the water rights complaints from the standpoint of fish and wildlife protection, we offer the following comments and recommendations.

The California red-legged frog is known to occur on the Ranch. Records of the California red-legged frog exist for the Trout Creek and Rinconada watershed (CNDDDB 2010); however, due to the lack of survey information, the exact distribution of the species throughout the Ranch is

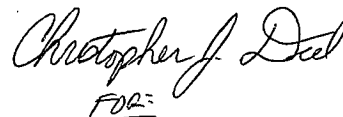
unknown. The Ranch has many small drainages which may also support habitat for the California red-legged frogs. Adult California red-legged frogs have been documented to move overland for more than 2 miles "without apparent regard to topography, vegetation type, or riparian corridors" (Bulger et al. 2003).

The California red-legged frog has been extirpated or nearly extirpated from 70 percent of its former range. The most secure aggregations of California red-legged frogs are found in aquatic sites that support substantial riparian and aquatic vegetation and lack non-native predators. Ongoing causes of decline include direct habitat loss due to stream alteration and disturbance to wetland areas, indirect effects of expanding urbanization and competition or predation from non-native species (Service 2002).

Water diversions may result in reduced surface water habitat or may degrade the riparian habitat that supports sensitive species. We recommend that impacts arising from the activities related to any future water diversion infrastructure be evaluated. The current and potential future increase in water diversion, as proposed, could result in take of the California red-legged frog or other listed species. We recommend that the Water Board coordinate with the Service to address any potential effects through further analysis of the current level of water diversion and any potential future increase, to determine if take may occur. Our assessment of the water rights investigation does not constitute a full review of potential effects to species listed pursuant to the Act. Please note that the take of any federally listed species that could occur as a result of the current or future water diversions would require exemption pursuant to section 7 or authorization pursuant to section 10 of the Act.

We appreciate the opportunity to provide comments on the proposed project and look forward to working with the Water Board in the future. If you have any questions regarding the contents of this letter, please contact Heather Abbey at (805) 644-1766, extension 290.

Sincerely,

Handwritten signature of Christopher J. Deel in cursive script.

FOR:  
Douglass Cooper  
Acting Deputy Assistant Field Supervisor

## REFERENCES CITED

- Bulger, J.B., N.J. Scott, and R.B. Seymour. 2003. Terrestrial activity and conservation of adult California red-legged frogs (*Rana aurora draytonii*) in coastal forests and grasslands. *Biological Conservation* 110(2003):85-95.
- [CNDDB] California Department of Fish and Game, Natural Diversity Database. 2010. Element occurrence reports for *Rana draytonii*. California Department of Fish and Game, Sacramento, California.
- U.S. Fish and Wildlife Service. 2002. Recovery plan for the California red-legged frog (*Rana aurora draytonii*). U.S. Fish and Wildlife Service, Portland, Oregon. viii + 173 pp.