

North County Watch

Looking Out Today For Tomorrow

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

Attn: Mr. Charles Rich

July 16, 2008

Dear Mr. Rich,

North County Watch is a 501 3c organization committed to sustainable development and conservation of resources and the environment in north San Luis Obispo County.

It has come to our attention that there may be significant violation of water rights pertaining to the Public Trust occurring on the Santa Margarita Ranch.

Please find enclosed a Water Rights Complaint form against Santa Margarita Ranch LLC.

Also find an "Additional Information" document and the following attachments:

- Letters and documentation referenced on the "Additional Information" sheet.
- Two Letters from the San Luis Obispo County Water Resources Advisory Committee that are that committee's comments on the Santa Margarita Ranch Draft EIR.
- Ten supporting photographs.

Thank you for your consideration of our concerns and investigation of our complaint.


Susan Harvey



State Water Resources Control Board



Linda S. Adams
Secretary for
Environmental
Protection

Division of Water Rights
1001 I Street - 14th Floor • Sacramento, California 95814 • (916) 341-5300
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
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Division of Water Rights: <http://www.waterrights.ca.gov>

Arnold Schwarzenegger
Governor

WATER RIGHT COMPLAINT

For information in filling out this form,
see pamphlet titled "Investigating Water Right Complaints"

CID# _____
File: _____
(For staff use only)

Complainant

<u>NORTH COUNTY WATCH – Susan Harvey</u> (Name)	<u>805-239-0542</u> (Phone No.)
<u>P.O. Box 455, Templeton, CA</u> (Address)	<u>93465</u> (Zip Code)

Party complained against (Respondent)

<u>Santa Margarita Ranch LLC.</u> (Name)	_____ (Phone No.)
<u>750 Pismo St., San Luis Obispo, CA</u> (Address)	<u>93401</u> (Zip Code)

Location of Respondent's Diversion

The diversion is located on <u>Trout Creek, Rinconada Creek, Yerba Buena Creek, Santa Margarita Creek</u> (Name of Spring, Stream, or Body of Water and tributaries)	
At a point within _____ ¼ of _____ ¼ of Section _____ T _____ R, _____ B&M	
County of <u>San Luis Obispo</u>	Assessor's Parcel No. <u>Township 30, Range 13</u>
The general location is as follows: <u>Santa Margarita Ranch, 8 miles North of San Luis Obispo,</u> (Name of Road, Distance to Nearest Town, Etc.)	
<u>east of Santa Margarita on Highway 58</u>	

Description of Complaint

The following situation or condition is occurring (attach additional sheets, photographs, maps, sketches, reports, etc. as needed.)
<u>De-Watering of Blue Line Streams</u>
<u>Significant impacts to Steelhead Critical Habitat</u>
<u>Unauthorized diversions for unauthorized uses</u>
<u>Surface water storage exceeding authorized time limits</u>
<u>No monitoring/follow-up as required by DFG, NOAA, NMFS, USFWS</u>
<u>See attached "Additional Information" sheet for details.</u>

Injury to Complainant or Public Trust Resources

The situation is causing injury to me or public trust resources as follows (attach additional sheets if necessary):

Over pumping of subterranean stream flows for irrigation have de-watered large

reaches of Trout and Rinconada Creeks. These Creeks have been identified as

critical habitat for South Central Steelhead, and historically support year-round

population. See "Additional Information" sheets.

Possible Resolution of Complaint

I offer the following possible solution to the situation (attach additional sheets if necessary):

The SWRCB has the authority to take action to protect the Public Trust Resources, if the activities are causing unreasonable and adverse impacts to fish and wildlife.

SWRCB should take action to require the reduction or cessation of pumping from implicated wells.

Complainant's Diversion and Water Rights (Fill in if Injury Claimed)

My diversion is located on: N.A.

(Name of Spring, Stream, or Body of Water)

At a point within _____ ¼ of _____ ¼ of Section _____ T _____ R, _____ B&M

County of _____ Assessor's Parcel No. _____

I use water for (what and where): _____

The basis of my claim to divert water is:

- ☐ An appropriative right under Licence No. _____, Permit No. _____, Application No. _____
☐ A Riparian or pre-1914 claim supported by Statement of Water Diversion and Use No. _____
☐ Other (Describe): _____

A copy of this complaint has been sent to the Respondent by:

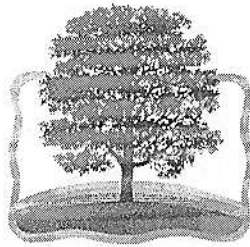
☐ Certified Mail ☒ Regular Mail ☐ Personal Delivery

I declare under penalty of perjury that the above is true and correct to the best of my knowledge and belief.

Signature

Date

NOTE: Send original Complaint to the Division of Water Rights and a copy to the Respondent. Forms for submitting an Answer to Complaint will be sent to the Respondent by the Division of Water Rights.



North County Watch

Looking Out Today For Tomorrow

WATER RIGHT COMPLAINT
State Water Resources Control Board

Additional Information

Complainant: North County Watch
Respondent: Santa Margarita Ranch LLC
Date July 16, 2008

Description of Complaint:

- Previously inactive wells identifies by SWRBC to "...capture water defined by California Law as a subterranean stream flowing through known and definite channels..."¹ are now in use for irrigation purposes. (Wells identified as 3D2, 34M, 34C, 21G, 16Qm, 16L, 8Q, 17M1, 18H1.) As a result, significant stretches of Trout and Rinconada Creeks have been completely de-watered. This is significantly impacting critical habitat for federally threatened red-legged frog (*Rana aurora draytonii*) and South-Central California Coast Steelhead (*Onocorhynchus mykiss*), as demonstrated by the fact that pools documented to contain steelhead by University of California biologists in August, 2006, are now dry. (See attached photos) Pumping the underflow of these creeks is resulting in the exact impacts predicted by Department of Fish and Game² and National marine fisheries Service,³ and in portions of the SWRCB's Field Investigation Memo response to the ECOSLO complaint of 10/27/99.⁴ This constitutes evidence that unreasonable impacts to public trust resources are occurring.

¹ Charles Rich, Letter to Rob Rossi, Pg. 8/10/00

² Brian Hunter Letter to Rob Rossi, Santa Margarita Ranch, 7/21/99

³ Patrick Rutten Letter to Rob Rossi, Santa Margarita Ranch, 7/7/99

⁴ "Complaint Unit staff believe that withdrawals of water from the alluvial wells on the Ranch will likely result in reduced stream flows in Santa Margarita Creek, Yerba Buena Creek and Trout Creek. Pumping from the wells within a subterranean stream will likely...reduce water flows." Pg. 13

- The "stock pond" identified in license # 12456, application 26566, which is permitted for storage of *runoff only*, for 30 day periods, appears to be filled regularly through a central pipe, using water from an unknown origin, in conflict with the terms of its license. As a result, it appears that significantly more water is being stored in this stock pond than is allowed by permit (17.7 afy).
- Three additional non-stock pond concrete reservoirs (fenced off from livestock) near or adjacent to Trout Creek, Rinconada Creek and tributaries have been constructed since the SWRCB's 2000 field investigation. These reservoirs appear to be holding surface water for more than 30 days at a time, in excess of legal limits. We have been unable to locate state licenses or local permits for these installations.
- We have been unable to verify that the unauthorized diversions identified in the SWRCB's field investigation and addressed in their 8/10/00 memo have received the necessary water rights as required. These reservoirs remain operational year-round, along with the wells that pump the subterranean stream flows and percolating groundwater to fill them. In addition, we have been unable to verify that the requirements set forth in the 7/21/99 letter from the Department of Fish and Game (attached) have been complied with.
- Extensive infrastructure for water conveyance throughout the property, including approximately 20 new wells, reservoirs, pipelines and pumps, in conjunction with the planting of nearly 1,000 acres of irrigated vineyards and plans to install an additional 2,000 acres of vineyards and other crops, and proposed extensive residential and other non-agricultural development, have been installed since the 2000 field investigation. The public has no ability to verify that these diversions and associated infrastructure are consistent with state law, as the Ranch owners have never prepared a "schematic diagram of the plumbing that will be used to transport the water from the well to the place of use prior to the preparation of each new vineyard or implementation of each new well"⁵ as required by the RWRCB, or a water management plan, pursuant to Water Resources Code 10753 et seq, and suggested by SWRCB.⁶ Nor is the County providing any oversight with respect to these activities.

⁵ Charles Rich, Letter to Rob Rossi, Pg. 3, 8/10/00

⁶ Field Investigation-Memo, Pg. 12, 8/10/00

- A previous complaint filed by ECOSLO was closed when the SWRCB received applications for "stock ponds" on the ranch. However, the SWRCB noted that if sufficient evidence were to become available in the future to demonstrate that groundwater diversions were impacting public trust resources, the SWRCB would "be willing to reevaluate the situation and consider the need for remedial action."⁷

Injury to Complainant or Public Trust Resources

- Over-pumping of subterranean stream flows have de-watered large reaches of Trout and Rinconada Creeks. These creeks are identified on USGS maps as blue line streams, which are, by definition, known to flow year-round. USGS maps show that Trout Creek runs through an area named "Water Canyon." Long-time residents familiar with this watershed have never seen this stream run dry in 40 years of direct observation, even in severe drought years. NMFS has designated these creeks as critical habitat for federally listed steelhead, and federally listed red-legged frog (*Rana aurora draytonii*) have been identified in these drainages.⁸ Several sea-run steelhead over 21" were spotted by experts in the field at flood stage in January, 2008. UC Davis biologist Lisa Thompson and Cooperative Extension Resource Advisor Royce Larsen also documented the presence of a large, sea-run Steelhead Trout in Lower Trout Creek during their study of August, 2006.⁹ Numerous other special status species in this watershed rely on year-round surface flows for survival in the immediate area, including White-tailed Kite, Purple Martin and Loggerhead Shrike. Clearly, the Ranch is an important source of biodiversity for vulnerable wildlife and bird species. The current and projected level of groundwater extraction is directly threatening the viability of these species and constitutes an unreasonable use of the resource.

Possible Resolution of Complaint:

The doctrine of reasonable use limits all rights to the use of water to that quantity reasonably required for beneficial use, and prohibits unreasonable methods of use or diversion.¹⁰ The owners' riparian rights do not authorize them to ignore sharing reasonable beneficial use of the natural flow water which crosses their land with dependent wildlife. The SWRCB has responsibility to protect the public trust, including fish and wildlife resources. Accordingly, the SWRCB has the authority to take action to prohibit unreasonable methods of diversion that are adversely

⁷ Field Investigation-Memo, Pg. 12, 8/10/00

⁸ Santa Margarita Ranch Ag Cluster FEIR, Fig 4.3-3, Biological Constraints Map

⁹ Santa Margarita Ranch AG Cluster FEIR, Fig 4.3-66

¹⁰ (Sec 3, Art XIV, Const of Cal.; Peabody v. City of Vallejo, 2 Cal 2d 351, 40 Pac. 2d 486; Tulare Irr Dist. Et al v. Lindsay Strathmore Irr. Dist., 3 Cal. 2d 489, 45 Pac. 2d 972; Ranch Santa Margarita v. Vail, II Cal. 2d 501, 81P. 2d 533).

impacting instream purposes of water (fish and wildlife habitat) due to unreasonable stream diversions. These actions may include but are not limited to:

- Order a reduction or cessation of diversions from wells known to pump subterranean stream flow.
- Require comprehensive ground water availability analysis and drought time data collection on stream flows prior to the authorization of any new water demands on the Ranch, including irrigation, residential, or other non-agricultural uses. Studies should determine the safe yield water budget in the Upper Salinas watershed including dry season well capacities and current safe yields related to stream surface flow or lack thereof.
- Oversee a comprehensive water monitoring program in accordance with recommendations made by DFG, NMFS, and USFWS, (see attachments).

Cc:

Department of Fish and Game
National Marine Fisheries Service
US Fish and Wildlife Service
County of San Luis Obispo
California Sport Fishing Protection Alliance