



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

777 Sonoma Avenue, Rm 325
Santa Rosa, California 95404-6528

July 7, 1999

F/SWR3:JEA

Mr. Rob Rossi
750 Pismo Street
San Luis Obispo, California 93401

Dear Mr. Rossi:

On May 28, 1999, the National Marine Fisheries Service (NMFS) received a letter with concerns regarding your proposed agricultural operation on the Santa Margarita Ranch in San Luis Obispo, California and potential impacts on listed species.

According to this letter, the proposed plan is to convert 3,000 acres into vineyards this fall. Irrigation would be provided from wells along Rinconada and Trout Creeks. These creeks are in the headwaters of the Salinas River watershed. South-Central California Coast steelhead (*Oncorhynchus mykiss*) are listed as threatened under the Endangered Species Act of 1973, as amended (ESA) and are found in the Salinas River and in Trout and Rinconada Creeks. NMFS is concerned that the wells used for irrigation for the vineyard operations could be hydrologically connected to the underflow of the creeks. Water withdrawals could lower the water level in the creeks, adversely impacting the steelhead. If there has been any hydrological testing done on these wells, we would like to review the data.

Section 9 of the ESA prohibits the taking of any federally listed endangered or threatened species. The definition of "take" includes to harass, harm, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. "Harm" is defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). Anyone who engages in a take would be subject to prosecution under section 9 of the ESA. Such taking may occur only under the authority of NMFS pursuant to section 7 or through a section 10(a)(1)(B) permit, as mandated in the ESA.

Section 7 of the ESA requires federal agencies to consult with NMFS on proposed actions which may affect threatened or endangered species. If the proposed project is likely to adversely affect listed species, any federal agency involved in the permitting, licensing, funding, or any other aspect of this project may be required to consult with NMFS prior to the implementation of the project.

If a federal nexus does not exist for the proposed project, an exception to the federal prohibition against take of a listed species may be authorized by NMFS through an incidental take permit issued pursuant to section 10(a)(1)(B) of the ESA. To qualify for the permit, you would need to submit an application to NMFS together with a habitat conservation plan (HCP).



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If you determine that your proposed activities may result in incidental take, which is defined as take that is incidental to, but not the purpose of, the carrying out of an otherwise lawful activity, you should contact NMFS immediately. We are available to assist you in determining what adverse impacts may occur and how to minimize those impacts from your proposed operations. If you have any questions regarding this matter, please contact Ms. Joyce Ambrosius at (707) 575-6064.

Sincerely,



Patrick J. Ratten, Supervisor
Protected Resources Division

cc: J. Lecky - NMFS
K. Symonds - FWS, Ventura
E. Carroll - Dept. of Planning and Building, Co. of SLO
C. Marshall - CDFG,
B. Stafford - CDEG,
A. McMahon - Congressional Rep. Lois Capps

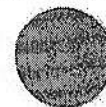
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UW. OR. WILDLIFE
SACRAMENTO



DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>



July 21, 1999

Mr. Rob Rossi
750 Pismo Street
San Luis Obispo, California 93401

Dear Mr. Rossi:

Santa Margarita Ranch
San Luis Obispo County

Department of Fish and Game personnel have recently received information regarding proposed activities on the Santa Margarita Ranch. Proposed activities include installation of a 3,000-acre vineyard located on four tributaries to the Salinas River Watershed. These tributaries are Santa Margarita Creek, Yerba Buena Creek, Trout Creek, and Rinconada Creek.

Water availability is a critical issue for people and public trust resources. The Department's mandate is to assure adequate water availability to ensure that there will be viable healthy streams in the future. Therefore, any project which directly, or indirectly, diverts water from streams, must demonstrate that water is available, especially during the drier months and years.

Your proposal, viticulture, has the potential to significantly impact stream flow in each of the listed tributaries. Of particular concern at this time is water availability. As the Agency that holds the State's fish and wildlife resources in trust for the people, the Department is responsible for protecting instream flow to maintain streams, riparian vegetation, fish, amphibians, and wildlife in a healthy condition. There are several sensitive species in Trout and Rinconada Creeks including the South-Central California Coast steelhead (*Oncorhynchus mykiss*) and the California red-legged frog (*Rana aurora draytonii*) which are listed as threatened under the Federal Endangered Species Act of 1973. Therefore, the Department desires information on water availability and whether the wells are hydrologically connected to the listed tributaries, thereby depleting the streamflow in the tributaries.

Enclosed is a draft copy of water use availability data requirements, prepared by Department's Senior Engineering Geologist/Hydrologist, Mr. Kit Custis. This draft, although

Conserving California's Wildlife Since 1870

Mr. Rob Rossi
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Page Two

still undergoing peer review, helps detail the kind of information the Department requires when water availability is an issue. This data will then assist the Department in our determination of impacts prior to initiation of the project.

If the wells are depleting streamflow to the listed tributaries, then you need to apply for an appropriative water right through the State Water Resources Control Board. If you are transporting the underflow of the listed tributaries to an adjacent drainage for irrigation or other uses, an appropriative water right is needed. Also, an appropriative water right is required if you construct or enlarge an existing reservoir which will store water for more than 30 days. An appropriative water right permit must be issued prior to the initiation of your project. The Department is prepared to file a complaint with the State Water Resources Control Board to follow through with actions if we determine that any of the above conditions exist and that appropriate water rights permits have not been obtained. Standard Department terms and conditions on appropriative water rights may include:

1. Limiting diversion to the wet months (December to March);
2. Maintaining a minimum bypass of 60 percent of the average annual unimpaired watershed production above the point of diversion;
3. Construction of a passive diversion designed to insure that instream flow is maintained;
4. Designation of a maximum number of acre feet to be used annually;
5. Limiting maximum rate of diversion;
6. Allowing access by Department personnel to monitor compliance.

The Department has direct jurisdiction under Fish and Game Code Section 1601-1603 in regard to any proposed activities that would divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake designated by the Department. A June 29, 1999 declaration from Mr. Fred Collins reports that you have recently drilled a well near Trout Creek which hit water flowing at over 1,500 gallons per minute at a depth of 12 to 15 feet. The total depth of this well is 60 feet. Due to the large volume of water reached at a relatively shallow depth, it would seem that this well is hydrologically connected to the underflow of Trout Creek. The total water needs of the proposed 3,000 acres of vineyards is estimated at between 3,000- and 5,000-acre feet depending on the spacing of the vines and needs for frost protection. Based on the

Mr. Rob Rossi
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above information, it appears that some wells supplying irrigation water to the proposed 3,000 acres of vineyards would be substantially diverting the natural flows of streams and that it will be necessary to obtain a streambed alteration permit under Section 1603 of the Fish and Game Code. Due to a recent court order, the issuance of this permit is subject to the California Environmental Quality Act (CEQA) and a permit cannot be issued until the appropriate CEQA document has been prepared. Work cannot be initiated until a streambed alteration permit is executed.

CEQA requires a mandatory finding of significance if a project will adversely affect the numbers and distribution of a threatened species. Given the fact that steelhead and red-legged frogs probably inhabit Trout and Rinconada creeks and that water withdrawals could lower the water levels in these creeks, a possible adverse impact to these species exist. If these impacts surpass the threshold for a mandatory finding of significance, an Environmental Impact Report (EIR) would be required for your project. The EIR will need to be prepared and approved prior to the Department issuing a streambed alteration permit. We understand that surveys and habitat assessments have been completed. Any documentation on your proposed activities as they relate to the biological resources would be valuable in determining impacts and identifying possible mitigation measures. You should also enter into consultation with the National Marine Fisheries Service and U. S. Fish and Wildlife Service regarding the potential take of Federally-listed species which is prohibited under the Federal Endangered Species Act.

Department personnel are available to work with you regarding this project. If you have any questions regarding our comments, please contact Mr. Chuck Marshall, Associate Fishery Biologist, at (805) 237-9538; or Mr. Carl Wilcox, Environmental Services Supervisor, at (707) 944-5525.

Sincerely,

COPY ORIGINAL SIGNED BY
BRIAN HUNTER

Brian Hunter
Regional Manager
Central Coast Region

Enclosure

cc: See Next Page

Mr. Rob Rossi
July 21, 1999
Page Four

cc: Mr. Kit Custis
Resources Agency
Department of Mines and Geology
801 K Street, MS 08-28
Sacramento, California 95814-3531

Ms. Kate Symonds
U. S. Fish and Wildlife Service
Ventura Field Office
2493 Portola Road, Suite B
Ventura, California 93003

Ms. Joyce Ambrosius
National Marine Fisheries Service
777 Sonoma Avenue, Room 325
Santa Rosa, California 95404

State Water Resource Control Board
Division of Water Rights
Post Office Box 2000
Sacramento, California 95812-2000

✓ Ms. Sarah Christie
FAX (805) 544-1871



Winston H. Hickox
Secretary for
Environmental
Protection

State Water Resources Control Board SURNAME / FILES



Gray Davis
Governor

Division of Water Rights

901 P Street • Sacramento, California 95814 • (916) 657-1945
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 657-1485 • Web Site Address: <http://www.waterrights.ca.gov>

AUG 10 2000

In Reply Refer
to:363:CLC:262.0(40-03-07)

Santa Margarita Ranch
c/o Mr. Rob Rossi
750 Pismo Street
San Luis Obispo, CA 93401

California Dept. of Fish and Game
c/o Mr. Robert Floerke
P. O. Box 47
Yountville, CA 94599

California Sportfishing Protection Alliance
c/o Mr. Robert Baiocchi
P.O. Box 1790
Graceland, CA 96103

Environmental Center of
San Luis Obispo County
c/o Mr. Pat Veesart
864 Osos Street, Suite C
San Luis Obispo, CA 93406

Gentlemen:

WATER RIGHTS COMPLAINTS REGARDING DIVERSION OF GROUNDWATER ON THE SANTA MARGARITA RANCH IN THE UPPER SALINAS RIVER WATERSHED, SAN LUIS OBISPO COUNTY

Enclosed is a copy of the Staff Report of Investigation regarding the subject complaints.
Although more detail is provided in the enclosed memo, a summary of the staff's conclusions is
as follows.

1. There is a potential that diversion of water to seasonal storage without an adequate basis
of right is currently occurring in the following reservoirs:
 - (a) the reservoir located in the northern portion of the Santa Margarita Ranch (Ranch)
just west of Garden Farms;
 - (b) the reservoir located in Sycamore Canyon at the location of "Kathy's cabin"; and
 - (c) two ponds located near the southern boundary of the Ranch, in a tributary to
Rinconada Creek approximately one mile east of the reservoir covered by
License 12456 (Application 26566).
2. The following wells, if made operational, would divert "percolating groundwater." As
such, the water that would be diverted is not within the permitting authority of the State
Water Resources Control Board (SWRCB).

SURNAME
DWR 540

CLC 7/24/2000

CAR
7-24-00

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Five Mile Field - F&T Well #1, Well E, Well F, and Rinconada Well 2A
Upper Trout Creek - 34F
Middle Trout Creek - 27R, 21P
Lower Trout Creek - 8G
Santa Margarita/Yerba Buena - 6F1, 6F2, 33F, 29H, 20H1

3. The following wells, if made operational, would capture water defined by California Law as a subterranean stream flowing through known and definite channels pursuant to Water Code Section 1200 and may require acquisition of an appropriative water right permit from the SWRCB unless some other valid basis of right can be established:

Upper Trout Creek - 3D2, 34M and 34C
Lower Trout Creek - 21G, 16Q, 16L, and 8Q
Santa Margarita/Yerba Buena - 17M1, 18H1

4. While diversions on the Santa Margarita Ranch may reduce the availability of water within the watershed or groundwater basin and thereby impact other diverters, this situation would probably constitute a dispute among competing water right holders. Evidence is not currently available to suggest that a misuse of water (i.e., waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water) is occurring.
5. While diversions from the wells on the Santa Margarita Ranch, if put into operation, will almost certainly reduce streamflows and may impact public trust resources, Complaint Unit staff are not aware of a sufficient body of evidence to justify action by the SWRCB to balance the needs of these resources, the Santa Margarita Ranch, and other diverters within the basin/watershed.

As a result of these conclusions, Complaint Unit staff believe that one of the following actions by representatives of the Santa Margarita Ranch should be undertaken regarding each of the reservoirs identified in paragraph 1 above:

- (a) submittal of documentation of a valid right for each facility;
- (b) submittal of an application(s) for appropriative water rights; or
- (c) make these reservoirs incapable of storing water.

Please notify this office within 30 days from the date of this letter regarding what course of action Santa Margarita Ranch intends to take with respect to these facilities.

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Because some of the wells on the Santa Margarita Ranch will tap water flowing in a subterranean stream, there is a possibility that a permit authorizing diversion would be required unless a valid riparian claim of right is sufficient to justify diversion from these facilities. If a riparian right is claimed, a Statement of Water Diversion and Use (Statement) should be filed with this office when diversions are initiated (forms to do so are included).

I suspect that additional complaints will be filed each time a new portion of the vineyard is prepared or one of the potentially jurisdictional wells is brought on line. Consequently, we are asking Santa Margarita Ranch to voluntarily submit a written report that explains the basis of right for the water to be utilized and include 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. These reports could be included with either the filing of a new Statement or an amendment to an existing Statement. Please let me know within 30 days from the date of this letter if Santa Margarita Ranch is also agreeable to this type of activity.

While it may be possible to justify all of the diversions under a claim of percolating groundwater or riparian rights, I agree with the complainants that the proposed diversions by the Santa Margarita Ranch from both percolating groundwater and subterranean streams will impact surface flows and groundwater levels within the area. However, we do not currently have sufficient evidence to demonstrate that public trust resources would be adversely impacted in an unreasonable manner by these diversions. Please bear in mind that should this information become available in the future, the Division would be willing to reevaluate the situation and consider the need for remedial action. While the rights of other diverters within the watershed or groundwater basin may very well be impacted by these diversions, the appropriate remedy between these types of competing right holders would be pursuit of an adjudication that deals with both surface and ground waters in a court of competent jurisdiction.

In view of the above information, I believe closure of the current complaints is justified as soon as the Santa Margarita Ranch addresses the issue of unauthorized storage in the reservoirs identified above and lets us know if submittal of the written reports mentioned above regarding diversion from wells that tap subterranean streams is acceptable. If there are any questions concerning this matter, please feel free to contact Cori Condon at (916) 657-2045 or myself at (916) 657-1945.

Sincerely,

ORIGINAL SIGNED BY.

Charles A. Rich, Chief
Complaint Unit

Enclosure

cc: See next page

AUG 10 2000

cc: Alexander Henson
Environmental Defense Center
27880 Dorris Drive, Suite 120
Carmel, CA 93923

James Patterson
Upper Salinas Watershed Coalition
9312 N. Santa Margarita Road
Atascadero, CA 93422

Jude Rock
Santa Margarita Area Residents Together
P. O. Box 486
Santa Margarita, CA 93453

Eric Greening
Water Resources Advisory Committee
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Paso Robles, CA 93447-2121

Otto Schmidt
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Santa Margarita, CA 93453

Alison Jones
Central Coast Regional Water
Quality Control Board
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San Luis Obispo, CA 93401-5427

William Miller
Santa Margarita Area Residents Together
P.O. Box 50
Santa Margarita, CA 93453

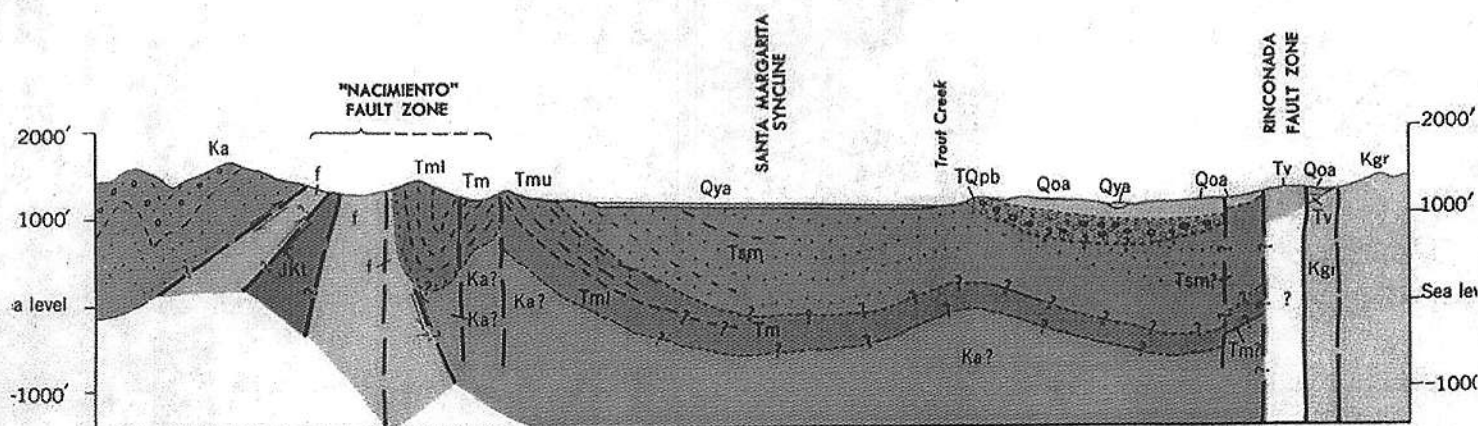
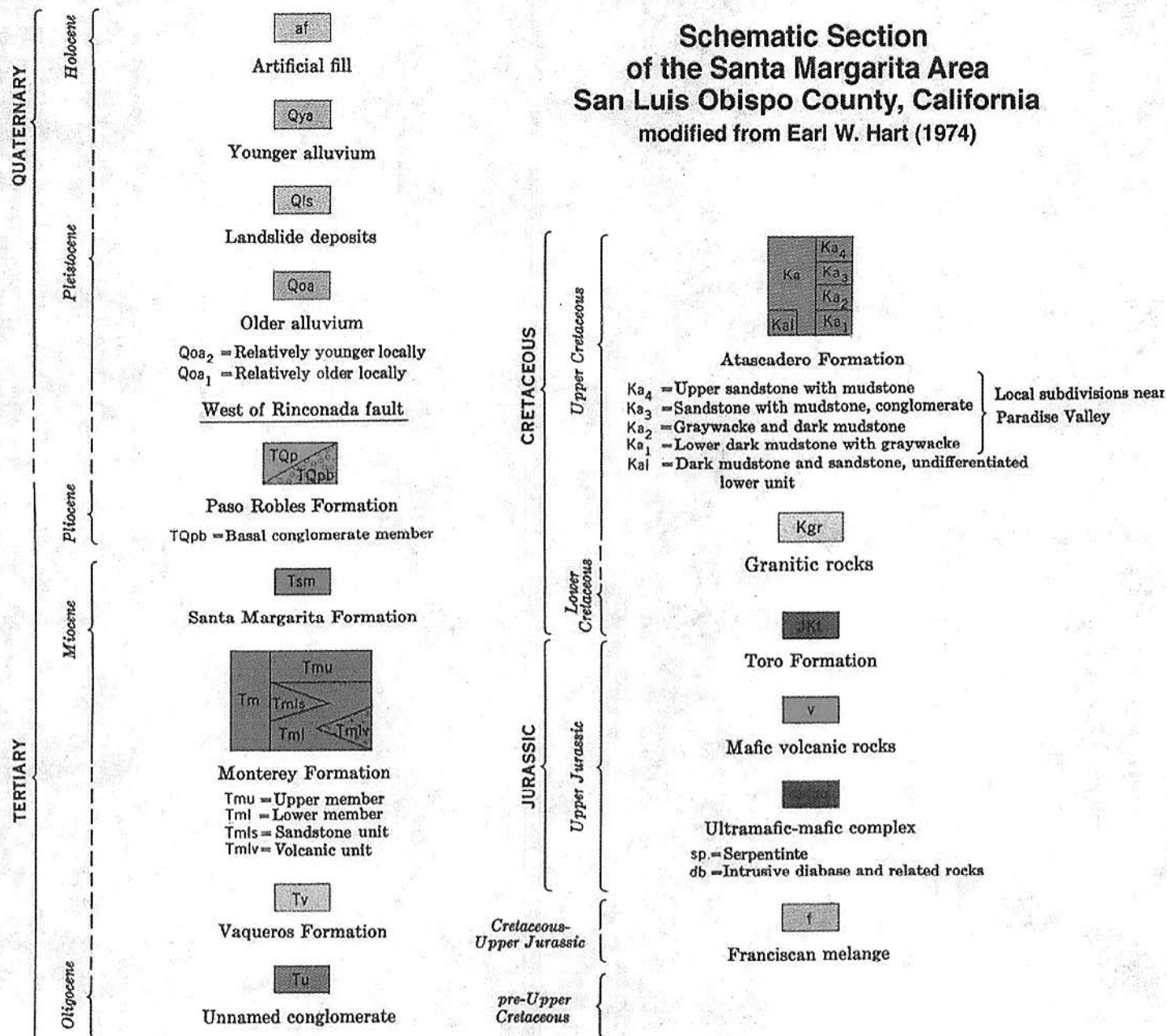
bcc: Harry Schueller
Dave Beriinger

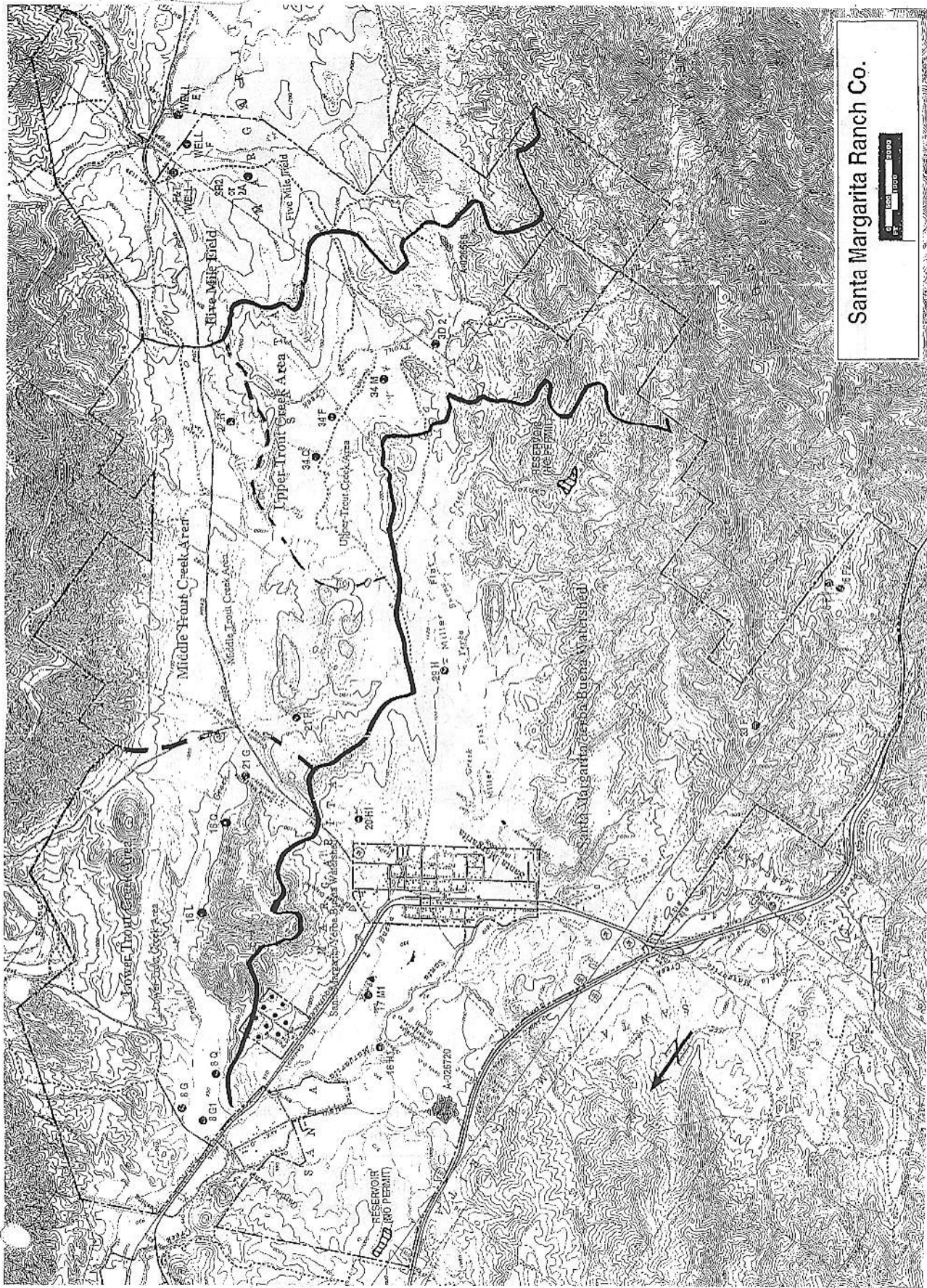
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Figure 1

Schematic Section of the Santa Margarita Area San Luis Obispo County, California modified from Earl W. Hart (1974)

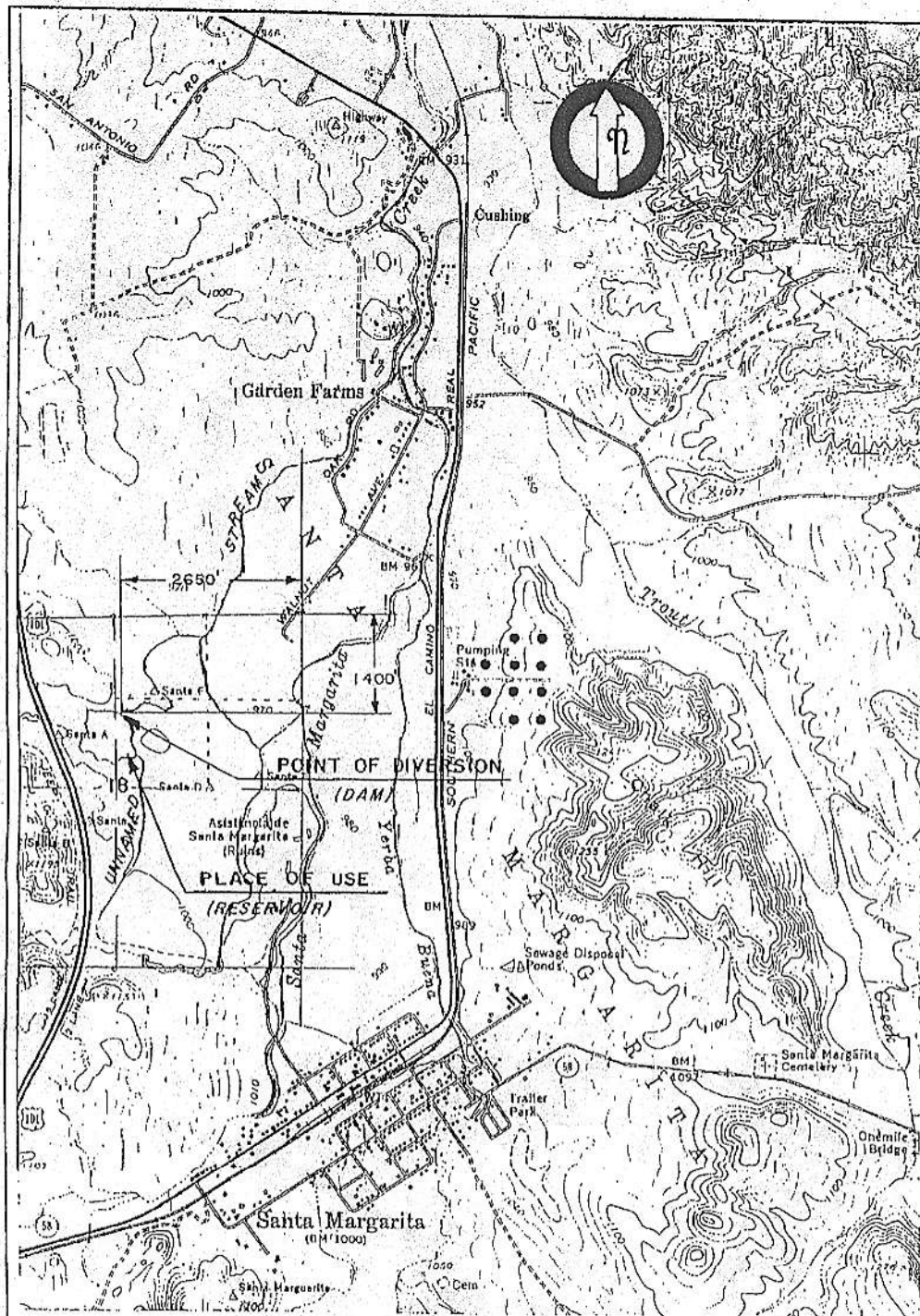
EXPLANATION





Santa Margarita Ranch Co.

FIGURE 4



LICENSEE **SANTA MARGARITA, LTD.**

PERMIT NO **19804**

APPLICATION NO **26720**

SOURCE **UNNAMED STREAM**

POINT OF DIVERSION

WITHIN SW 1/4 NE 1/4 OF PROJ.

SECTION 18, T 29 S, R 13 E, M. D. B & M

COUNTY OF **SAN LUIS OBISPO**

SANTA MARGARITA
U.S.G.S. QUAD

1976
DATE

1:24000
SCALE

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

LICENSE

12430

DATE: **3/27/89**

DRAWN: **-ECW**

CHECKED: **DM**

Figure 3



Winston H. Hickox
Secretary for
Environmental
Protection

State Water Resources Control Board

Division of Water Rights

901 P Street • Sacramento, California 95814 • (916) 657-1945
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 657-1485 • Web Site Address: <http://www.waterrights.ca.gov>



Gray Davis
Governor

MEMORANDUM

TO: File - 262.0(40-03-07)

FROM:

Charles A. Rich
Charles A. Rich, Chief
Complaint Unit

Cori Condon
Cori Condon
Associate Engineering Geologist
Complaint Unit

DATE: AUG 10 2000

SUBJECT: WATER RIGHTS COMPLAINT REGARDING DIVERSION OF WATER
BY THE SANTA MARGARITA RANCH FROM THE UPPER SALINAS
WATERSHED, SAN LUIS OBISPO COUNTY

BACKGROUND

The Division of Water Rights (Division) received complaints against proposed diversions of water by the Santa Margarita Ranch from the California Sportfishing Protection Alliance (CSPA), the California Department of Fish and Game (DF&G), and the Environmental Center of San Luis Obispo (ECOSLO). The complainants allege that proposed development of the Santa Margarita 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 DF&G and ECOSLO is that the increased pumping demands of the Santa Margarita 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 Santa Margarita Ranch.

Staff from the Division's Complaint Unit met with representatives from ECOSLO, Santa Margarita Area Residents Together (SMART), the Environmental Defense Center, Water Resources Advisory Committee, the Regional Water Quality Control Board, and the Upper Salinas Watershed Coalition in the Santa Margarita Elementary School library on

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Santa Margarita Ranch
Field Investigation-Memo

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March 28, 2000. The purpose of this meeting was to explain the Division's complaint process and to gain a better understanding of the concerns of these interested parties. The parties handed out a section of the San Luis Obispo County General Plan in the meeting. The General Plan describes the County's concern for long-term water availability and documents declining water levels in 1990, which caused area residents to reduce consumption until the local groundwater wells were replenished by rain. The parties at the meeting also expressed their concern that extracting groundwater will diminish available surface water and adversely impact environmental resources, particularly in Trout Creek. ★

The following day, March 29, 2000, Division staff met with representatives from Santa Margarita Ranch to carry out a site tour and gain more detailed information to assist in resolving the complaints. This field investigation report provides Complaint Unit staff's current understanding of the proposed vineyard project, the hydrogeologic setting and an analysis of the water rights for Santa Margarita Ranch.

SETTING

The Santa Margarita Ranch lies within an alluvial valley bordered on the west by the Santa Lucia Range and on the east by the La Panza Range. Granitic rocks occur along the eastern boundary of the project area, east of the Rinconada fault. The western edge of the property is bounded by Franciscan melange outcrops within the Nacimiento fault zone. In between the Rinconada and the Nacimiento fault zones is the Santa Margarita syncline. Within this troughlike feature 2000-3000 feet of sedimentary rocks make up the primary water bearing units. The sedimentary sequence includes recent, highly permeable stream channel and flood plain deposits across the lower portions of the valleys and along the active river channels. The underlying bedrock formations are comprised of Paso Robles, Santa Margarita, and Monterey Formations that are more consolidated and less permeable than the alluvial deposits. Figures 1 shows a typical geologic cross section across the Santa Margarita Ranch.

For the purposes of this report we distinguish between the unconsolidated, high permeability stream channel and flood plain deposits comprising the "alluvial aquifer", and the underlying more consolidated, lower permeability units as the "bedrock aquifers". Pumping tests demonstrate that the alluvial deposits are highly permeable, capable of transmitting large volumes of water as opposed to the underlying bedrock formations. The bedrock formations are relatively impermeable compared to the alluvial deposits. Groundwater flowing in the alluvial deposits has been interpreted as flowing through known and definite channels, bounded by relatively impermeable bed and banks of the bedrock formations.

Santa Margarita Ranch encompasses 13,800± acres in the Salinas River watershed. Surface water drains the area through four major creeks; Santa Margarita, Yerba Buena, Trout and Rinconada Creek. The southern boundary of the Trout Creek drainage forms a major drainage

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Santa Margarita Ranch
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divide on the Ranch. Areas south of this divide drain toward the southeast as tributaries to Rinconada Creek, which flows easterly across the southern portion of the Ranch directly into the Salinas River. Yerba Buena and Trout Creeks flow into Santa Margarita Creek and then drain into the Salinas River about 1¼ miles north of the Ranch boundary. Rainfall and infiltration through these creek beds recharge groundwater in the area.

A study entitled Groundwater Resources of the Santa Margarita Ranch, prepared by John Mann in 1987 states: *"The yield of the Trout Creek system, in addition to stored groundwater, is augmented by continuous surface flow, even in droughts. Thus the waters of the surface stream, the groundwater that feed the stream and those that flow from it are treated as a common source of water supply."* This statement supports the position that the alluvial aquifers are closely associated with the creeks in this area. Pumping from the alluvial aquifers can intercept groundwater that would otherwise discharge to the creeks, or pumping can induce flow from the creek into the alluvial aquifer.

The groundwater in the Santa Margarita basin has not been studied to the extent necessary to provide an accurate estimate of dependable yield. Existing facilities for the community of Santa Margarita appear adequate to sufficiently meet current demands during most years. However, during extended drought conditions, the alluvial groundwater supply is reduced. Most recently, water levels in the Santa Margarita area wells dropped to the point in 1990 that water-rationing measures were enacted.

SEASONAL STORAGE FACILITIES

Santa Margarita Ranch holds two appropriative water right permits. Applications 26566 and 26720 were filed to cover the water rights for two reservoirs located on the ranch. Licenses confirming full development and use under these rights have been issued. License 12456 (Application 26566) authorizes storage of 17.7 acre feet a year of water to a reservoir located on an unnamed tributary to Trout Creek (see figure 2). License 12430 (Application 26720) authorizes storage of 45 acre feet a year in a reservoir on an unnamed tributary to the Santa Margarita Creek (see figure 3). Diversions of water to these storage reservoirs must be made in accordance with the terms and conditions of the licenses issued by the Division. In the case of the two licenses held by the Santa Margarita Ranch, the purpose of use for the water collected to both reservoirs is for stockwatering, wildlife enhancement and fire protection only. This water currently cannot be used for irrigation. Additionally, the licenses specify that this water can only be diverted to storage during the period from January 1 to April 1 of each year.

During our site tour we noted at least four ponds that appear to lack water rights. One pond is located in the northern portion of the ranch just west of Garden Farms. Another pond is located in Sycamore Canyon at the location of "Kathy's cabin". This reservoir, associated with a small cabin, is approximately 200 feet wide and 300 feet long and exists at about the 1300 feet elevation. Two more ponds, estimated at less than 1 acre feet each, are located near the southern

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boundary of the ranch, in a tributary to Rinconada Creek approximately ½ mile east of the reservoir covered by License 12456 (Application 26566). Unless documentation of a valid right for each of these facilities can be provided, applications for appropriate water rights should be filed or these reservoirs should be breached.

GROUND WATER WELLS

In addition to observations made during the field inspection, representatives for the ranch provided well logs and pumping test data for most wells on the ranch property. At the time of the inspection, all of the well bores had been completed and in many cases, pumping tests performed. However, none of wells were equipped with production pumps and, as such, were inoperable. A description of each of the ranch wells is discussed according to their location within the following five (5) drainage basins:

- Five Mile Field (Rinconada Creek drainage);
- Upper Trout Creek;
- Middle Trout Creek;
- Lower Trout Creek; and
- Yerba Buena/Santa Margarita Watershed areas.

This convention is used throughout this memorandum. Figure 4 identifies the drainage boundaries and well locations.

Five Mile Field - The Five Mile Field in the Rinconada Creek watershed will be the area of Phase I development where the planting of 321 acres of vineyard has started. Four (4) wells have been drilled in this area as potential sources of water for irrigation and frost protection of these vineyards. The four wells in this area are identified as:

- F&T Well #1,
- Well E,
- Well F, and
- Rinconada 2A.

These wells are generally deep, reaching depths from 195 feet (Well E) to 730 feet (Well 2A). The wells are all sealed to approximately 50 feet below the ground surface (bgs) and screened at various depths starting as shallow as 95 feet bgs. The screened portions of these wells target coarse sand units of the Santa Margarita Formation and are interpreted as tapping groundwater within this bedrock aquifer.

Upper Trout Creek - The Upper Trout Creek area on the ranch extends from the rugged Santa Lucia Mountain Range to rolling hills and across the flat lands of the ranch in a northwesterly direction. Mr. Rossi explained that Upper Trout Creek would be the Phase II area for

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Santa Margarita Ranch
Field Investigation-Memo

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development of vineyards. Within the Upper Trout Creek area there are four (4) wells identified as:

- 3D2,
- 34M,
- 34F, and
- 34C.

With the exception of Well 34F, these wells are completed in the shallow alluvial deposits along Trout Creek.

The Water Well Drillers Completion Report (Driller's Report), show well 3D2 has a total depth of 95 feet, is sealed to a depth of 20 feet bgs and is screened from 35 - 95 feet bgs. The static depth to water noted on the Driller's Report is approximately 12 feet bgs. This well is within 100 feet of Trout Creek and is located in a constricted downcut valley bounded by the Monterey Formation to the east and west. Well 34C has a total depth of 91 feet, is sealed to 25 feet bgs and screened between 26 - 91 feet bgs. The depth to water in Well 34C is approximately 15 feet bgs. Well 34M has a total depth of 87 feet is sealed to a depth of 27 feet bgs and screened from 37-87 feet. The depth to water in Well 34M water is approximately 22 feet bgs. Wells 34M, and 34C are bounded by the rocks of the Santa Margarita formation on the east and west. Well 34F is screened between 120 - 160 feet and 220 - 400 feet and is sealed to a depth of 53 feet bgs. The static water level in this well was reported at 75 feet below ground and would indicate that Trout Creek is disconnected from the deeper groundwater system in this area by an unsaturated zone.

Middle Trout Creek - The Middle Trout Creek area encompasses the portion of Trout Creek west of Pozo Road extending south from Onemile Bridge approximately 1½ miles. Only two wells currently exist in the Middle Trout Creek area. These wells are identified as:

- 21P, and
- 27R.

No well log has been provided for Well 21P. However, we know from conversation with Tim Cleath of Cleath & Associates that Well 21P was drilled to target the basal conglomerate member within the Paso Robles Formation. Well 27R has a total depth of 300 feet, is sealed to a depth of 50 feet bgs and is screened from between 120 to 280 feet bgs. The depth to water in Well 27R is approximately 12 feet bgs. Because the annular space of Well 27P is filled with gravel from 50 feet bgs to the total depth of the well, some of the water extracted from this well may come from shallow alluvial deposits.

Lower Trout Creek - The Lower Trout Creek area encompasses the section of Trout Creek downstream of Pozo Road and extends to the northern boundary of the Ranch. We do not know the development planned for this area. Five wells have been identified in the Lower Trout Creek area.

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These wells are designated:

- 21G,
- 16Q,
- 16L,
- 8Q, and
- 8G.

With the exception of Well 8G these wells are completed in the shallow alluvial deposits along Trout Creek.

Well 21G has a total depth of 40 feet bgs, is sealed to 20 feet bgs and is screened from 20 - 40 feet bgs. The depth to water in Well 21G is approximately 7 feet bgs. Well 16Q has a total depth of 120 feet bgs, is sealed to a depth of 20 feet bgs and is screened from 20 - 120 feet bgs. The depth to water in Well 16Q is approximately 7 feet bgs. The only information provided for Well 16L indicates the total well depth is 60 feet. Well 8Q has a total depth of 60 feet bgs, is sealed to a depth of 30 feet bgs and is screened from 40 - 60 feet bgs. The depth to water in Well 8Q is approximately 9 feet bgs. Well 8G has a total depth of 720 feet bgs, is sealed to a depth of 58 feet and screened from 220 - 720 feet bgs. The depth to water in Well 8G is approximately 44 feet bgs.

Santa Margarita/Yerba Buena Watershed - The Santa Margarita/Yerba Buena Watershed is proposed for Phase III development of vineyards. Within the Santa Margarita /Yerba Buena Watershed there are seven (7) existing wells and we were told that additional wells will be needed in the area to meet the demand of the Phase III development. The wells currently in this area are identified as:

- 6F1,
- 6F2,
- 33F,
- 29H,
- 20H1,
- 17M1, and
- 18H1.

Three (3) of these wells: 6F1, 6F2 and 33F are located west of the Nacimiento Fault zone, 2000 feet above sea level. These wells are drilled into the Monterey Formation near the headwaters of Trout Creek. No log has been provided for well 33F. Well 6F1 is drilled to 180 feet, sealed to a depth of 22 feet and screened between 80 to 180 feet bgs. Well 6F2 is drilled to a depth of 520 feet, sealed to a depth of 52 feet and is a multiple-completion well with screens set at 100 - 210 feet bgs and 310 - 510 feet bgs.

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Two deep wells have been drilled in the Santa Margarita/Yerba Buena Watershed southeast of the City of Santa Margarita. These two wells are identified as 29H and 20H1. Well 29H has a total depth of 370 feet, no seal information has been provided, and the well is screened from 210 - 370 feet bgs. Well 20H1 has a total depth of 550 feet, is sealed to a depth of 55 feet and is screened from 80 - 550 feet bgs.

Two wells currently exist near the Rancho headquarters. These wells are identified as 17M1 and 18H1. Although no Driller's Reports were submitted for these wells, we know that the water level in well 17M1 was reported to be at approximately 3 feet below ground. This well was reportedly drilled in the alluvium of Yerba Buena Creek where the depth of the alluvium extends to 53 feet bgs. Pump testing of 17M1 for 8 hours showed a yield of 250 gallons per minute with a drawdown of 19 feet.

ANALYSIS

The complainants allege that proposed development of the Santa Margarita Ranch have 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. Some of the complainants have also expressed concern that increased pumping demands on the Santa Margarita Ranch will result in overdraft of the groundwater aquifer. The Division has the authority to investigate the following types of complaints:

1. Violation of Permit/License Terms - A complaint may be filed if the holder of a water right permit or license issued by the State Water Resources Control Board (SWRCB) is not complying with the terms and conditions of the permit or license.
2. Unauthorized Diversion - A complaint may be filed if a water user does not appear to have a valid water right. The Division will investigate to determine whether the SWRCB has issued a permit or license, or whether the water user may have a riparian, pre-1914, or other type of water right. If Division staff determines that the water user does not have a valid water right, this party would be deemed to be in trespass against the State of California pursuant to Water Code Section 1052 and action will be taken to insure that either a valid right is acquired or that the person stops diverting the water.
3. Waste or Unreasonable Use - The California Constitution requires that all waters of the State be put to reasonable and beneficial use. It is illegal to waste water, to divert water for non-beneficial or unreasonable uses, or to use an unreasonable method of diversion. The Division looks at each diversion on a case-by-case basis to determine whether the practices are unreasonable or non-beneficial and what type of action should be taken.
4. Public Trust - The State Water Board has a responsibility to protect the public trust, i.e. the public's right to the use of the State's waters for instream purposes such as recreation,

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navigation, and fish and wildlife. The Division generally will investigate complaints, which allege that water is being diverted in a manner inconsistent with public trust uses. The concept of public trust relating to water rights, however, generally involves complex legal and institutional relationships. The burden of providing sufficient evidence to show that public trust resources are being adversely impacted in an unreasonable manner normally rests with the complaining party.

The complaints in question appear to apply to categories 2 through 4 above.

Unauthorized Diversion of Water

Surface Reservoirs - There are four reservoirs on the ranch for which we are unaware of a basis of right. Two ponds are located near the southern boundary of the ranch, in a tributary to Rinconada Creek approximately ½ mile east of the reservoir covered by License 12456 (Application 26566). Another pond is located in Sycamore Canyon at the location of "Kathy's cabin". The fourth pond is located in the northern portion of the ranch just west of Garden Farms. All four of these facilities appear to collect water to storage on a seasonal basis (i.e., collection of water during a period of excess stream flow for later use during a period of deficient streamflow). Unless documentation of a valid right for each of these facilities can be provided, applications for appropriative water rights should be filed or these reservoirs should be breached.

Groundwater Extractions - Twenty two wells have been constructed on the ranch that may be utilized to pump groundwater. The legal classification of groundwater determines if its appropriation requires a water right from the SWRCB. The jurisdiction of the SWRCB to issue permits for the diversion of subsurface water is limited in the Water Code to "subterranean streams flowing through known and definite channels." Subsurface waters of this category must be bounded by definable beds and banks and flowing in a definite direction. Therefore, appropriations of groundwater from subterranean streams require a water right permit from the SWRCB pursuant to Water Code Section 1200 et seq. Percolating groundwater is subject to the laws of groundwaters and permits from the State Water Board are not required for appropriations from the source.

To classify groundwater as a subterranean stream the flow must be bounded by a known and definite channel, the following physical conditions must exist:

1. A subsurface channel must be present;
2. The channel must have relatively impermeable bed and banks;
3. The course of the channel must be known or capable of being determined by reasonable inference; and
4. Groundwater must be flowing in the channel

Subsurface water not subject to the Board's jurisdiction is called "percolating groundwater".

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Percolating groundwater must not constitute part of a definite underground stream. Our preliminary evaluation finds some of the ranch's wells may be tapping "percolating groundwater" over which the SWRCB has no permitting authority. Other wells on the ranch, however, do appear to be capable of drawing water from "subterranean streams". Unless the use of this water can be justified under a claim of riparian right or some other type of valid water right, an application(s) should be filed. The specific analysis for each well field are as follows:

Five Mile Field - Given the depth of these wells and the deeper screened intervals it is unlikely that withdrawals from these wells will have an immediate impact on surface water in this area. These wells appear to be constructed into the bedrock aquifer and we would consider the water withdrawn from these wells to be classified as "percolating groundwater". However, because it is difficult to determine the hydraulic communication between the alluvial aquifer and the bedrock aquifers, and given the close proximity of Wells E, F and F&T Well #1 to Rinconada Creek, a lowering of the percolating groundwater table in this area may cause a depletion in streamflow in Rinconada Creek on a seasonal basis; especially during years of low precipitation.

Upper Trout Creek - Because Trout Creek is a major drainage, greater thicknesses of alluvium have been deposited over the bedrock. During our field investigation we observed sections of Upper Trout Creek infiltrating into the subsurface and then resurfacing some distance downstream. This suggests that flows along this creek are controlled by the thickness of the alluvium and the depth to bedrock and that a direct relationship exists between surface water and the alluvial aquifer along the creek. Wells 3D2, 34M and 34C are located within the alluvial aquifer associated with Trout Creek. Pumping from the shallow wells in this area (3D2, 34M and 34C) will likely result in increased recharge of water from the stream into the alluvium.

To classify groundwater as subterranean stream, flow of groundwater must be bounded by a known and definite channel. In the Upper Trout Creek area, sedimentary rocks of the Monterey Formation and Santa Margarita Formation form "bed and banks" that are relatively impermeable compared to the aquifer material filling the stream channel, and is consistent with the subterranean stream designation. The criteria for a subterranean stream is not that the bed and banks be absolutely impermeable in this area, but rather, relatively impermeable compared to the alluvium filling the channel. The course of the channel can be determined by reasonable inference and groundwater is flowing in the channel. Subsurface waters bounded by definable beds and banks and flowing in a definite direction are subject to the permitting authority of the State Water Resources Control Board. As such, we believe a valid riparian claim of right or an appropriate right will be needed to justify pumping from wells 3D2, 34M and 34C.

Pumping Well 34F will probably not have an immediate impact on the flow of Trout Creek. This well appears to be constructed into the bedrock aquifer and water pumped from this aquifer may be classified as "percolating groundwater". Percolating groundwater must not constitute part of a subterranean stream and is not subject to the Board's jurisdiction.

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Middle Trout Creek - Wells 27R and 21P appear to be constructed into the bedrock aquifer and, therefore, water pumped from these wells may be classified as "percolating groundwater". No physical evidence has been provided to indicate if the groundwater is in hydraulic connection with the surface stream in this area. However, given the close proximity of Wells 27R and 21P to Trout Creek and the limited depth of the annular seal it is possible that pumping from these wells could result in reduced flow in the stream.

Lower Trout Creek - In the Lower Trout Creek area, sedimentary rocks of the Paso Robles Formation and Santa Margarita Formation form "bed and banks" that are relatively impermeable compared to the aquifer material filling the stream channel, and is consistent with the subterranean stream designation. Subsurface waters bounded by definable beds and banks and flowing in a definite direction are subject to the permitting authority of the State Water Resources Control Board. As such, we believe a valid riparian claim of right or an appropriative right will be needed to justify pumping from wells 21G, 16Qm 16L, or 8Q.

The static water level in well 8G indicates that Trout Creek may be disconnected from the deeper groundwater system by an unsaturated zone. Pumping Well 8G will probably not have an immediate impact on the flow of Trout Creek. Because this well appears to be screened in the bedrock aquifer, water pumped from this well may be considered "percolating groundwater". Percolating groundwater must not constitute part of a subterranean stream and is not subject to the Board's jurisdiction.

Santa Margarita/Yerba Buena Watershed - Wells 6F1, 6F2 and 33F appear to be constructed into a bedrock aquifer and therefore, water pumped from these wells could be considered to be "percolating groundwater". However, over 30 inches per year of precipitation falls in this area. Some of the runoff from this precipitation infiltrates the streambeds and recharges the alluvial aquifer but other portions of this runoff recharges the bedrock aquifers. Consequently, withdrawal of groundwater from the fractures in the upland areas will ultimately affect the amount of water available to recharge the valleys and points of discharge, (i.e. the surface streams).

Wells 29H and 20H1 appear to be drilled into the Santa Margarita sandstone near the synclinal axis. Therefore, these wells appear to be constructed into the bedrock aquifer and water pumped from these wells may also be classified as "percolating groundwater". Given the depth of these wells and the deeper screened intervals, withdrawals from these wells are unlikely to have an immediate impact on surface water in this area. Nonetheless, a depletion effect is possible in the long term.

In the Santa Margarita/Yerba Buena Watershed area, sedimentary rocks of the Santa Margarita Formation form "bed and banks" that are relatively impermeable compared to the aquifer material filling the stream channel adjacent to the Santa Margarita and Yerba Buena Creeks, and

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is consistent with the subterranean stream designation in the area of wells 17M and 18H1. The course of the channel can be determined by reasonable inference and groundwater is flowing in the channel. Subsurface waters bounded by definable beds and banks and flowing in a definite direction are subject to the permitting authority of the State Water Resources Control Board. As such, we believe a valid riparian claim of right or an appropriative right will be needed to justify pumping from wells 17M1 and 18H1. Pumping of these wells will probably result in reduced flow in the Santa Margarita and Yerba Buena Creeks.

Summary -

The following wells appear to be tapping "percolating groundwater":

Five Mile Field - F&T Well #1, Well E, Well F and Rinconada Well 2A
Upper Trout Creek - 34F
Middle Trout Creek - 27R, 21P
Lower Trout Creek - 8G
Santa Margarita/Yerba Buena - 6F1, 6F2, 33F, 29H, 20H1

The following wells appear to be drawing from a "subterranean stream":

Upper Trout Creek - 3D2, 34M and 34C
Lower Trout Creek - 21G, 16Qm 16L, or 8Q
Santa Margarita/Yerba Buena - 17M1, 18H1

Applications to appropriate water should be filed for the wells drawing from the subterranean streams associated with the alluvial deposits of the Santa Margarita, Yerba Buena and Trout Creeks, **unless** the use of this water can be justified under some other valid claim of right. All of these wells are located on parcels of land that touch the stream. Consequently, there is a possibility that direct diversion and use of this water in the immediate vicinity of the well could be made under a riparian claim of right. However, because the ranch is so large, there is a distinct possibility that water from some or all of these wells might be delivered to parcels that are either not riparian to the stream of origin or are located outside the watershed of the stream from which the water is pumped. In both of these cases, a riparian claim of right is not valid. There are also plans to construct reservoirs that would hold water for frost protection purposes.

Seasonal storage of water in these facilities cannot be justified under a riparian claim of right.

Waste and Unreasonable Use of Water

Irrigation of vineyards is considered to be a beneficial use of water. Vineyards also use relatively small quantities of water. Application of about 2 acre-foot per acre is calculated as the irrigation requirements for wine grapes on the Santa Margarita Ranch by the University of California Cooperative Extension. The vineyard manager indicated during the inspection that water use on the ranch might be as low as 1/2 acre-foot/acre. Consequently, there does not appear to be any

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evidence that the purpose and/or quantity of the proposed use of water is wasteful or unreasonable.

Some concern has been expressed that the groundwater basin may already be in a state of overdraft and that additional diversions of the magnitude proposed by Santa Margarita Ranch would be unreasonable. An important point to remember is that Santa Margarita Ranch possesses some valid water rights. The fact that the exercise of these rights might result in water shortages does not necessarily mean that these diversions should be totally prohibited.

Division staff are not aware of sufficient evidence to enable a determination of the "safe yield" of the water resources in the area. If, however, these resources are or were to become inadequate to meet the needs of all beneficial uses within the basin / watershed, a reduction of diversions would certainly be a prudent course of action. The development of a water management plan, either under existing law (Water Code section 10753 et seq.) or by means of a private agreement amongst the parties (i.e., Santa Margarita Ranch, the City of Santa Margarita, Garden Farms interests, etc.) might be an appropriate vehicle to ensure that maximum beneficial use of water is maintained pursuant to California water law.

If a voluntary management plan cannot be established, litigation to obtain an adjudication of all water rights involved might be necessary to determine how diversion reductions should be made. If an adjudication were pursued, the highest priorities would probably be assigned to riparians and percolating groundwater users who apply water on lands overlying the groundwater basin. During times of shortages, these parties would probably be limited to a correlative share of the available supply. Diversions of percolating groundwater to lands that do not overlie the basin (i.e., groundwater appropriators) and appropriators of surface water would most likely be granted lower priorities. However, the final solution would need to be established by a court of competent jurisdiction and some variations of priorities based on the specific facts of the situation would not be unusual.

Public Trust Impacts

As discussed above, most of the diversions from the ranch wells will reduce flows in the creeks on the ranch. In some cases this reduction in flow may occur shortly after the water is pumped from the well. In other situations, the impacts may occur over a period of months or years. The longer-term impacts may be difficult to identify due to natural variations in streamflow.

Division staff are not aware of any detailed information that would allow the SWRCB to determine an appropriate balance between public trust and other uses. In order to take action in response to a public trust complaint, the following types of information are needed:

- the types and numbers of public trust resources that currently inhabit the area or would inhabit the area if diversions were to be reduced;

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- the relationship between groundwater pumping and streamflow;
- the relationships between streamflow and public trust resources;
- the potential for mitigation of adverse impacts other than by pass requirements (e.g., habitat restoration, etc.);
- the potential impacts of not diverting water (i.e., information that could be used to evaluate a potential "balance" between public trust resources and consumptive uses by man); and
- the potential impact of other diverters within the basin / watershed who may also be impacting public trust resources in a cumulative manner.

Because this information is not currently available and the burden of providing sufficient evidence to show that public trust resources are being adversely impacted in an unreasonable manner normally rests with the complaining party, there does not appear to be any basis for action by the Division at this time.

SUMMARY AND CONCLUSIONS

Hydrology - 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 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 result in increased recharge of water from the streams into the alluvium thereby reduce surface flows. Additionally, pumping from the alluvial aquifers may also deplete the streams by capturing groundwater that would otherwise discharge into surface channels. When the shallow wells are pumping, the associated "cone of depression" may expand to a point that the streambed is intercepted resulting in a more immediate impact on streamflows. Pumping from the deeper wells is less likely to have an immediate impact on surface water. Because the potential hydraulic communication between the alluvial aquifer and the bedrock aquifers is unknown, determining if any measurable stream depletion will occur from pumping the deeper wells is difficult. However, if groundwater withdrawals from the basin exceed recharge, decreased discharge from the bedrock aquifer into the alluvium could be expected over time along with a corresponding decrease in discharge from the alluvium to surface channels. Therefore, if the groundwater withdrawals are of a sufficient magnitude over a long enough period of time, water levels in the surface water bodies could be adversely impacted from the deeper wells as well.

The wells determined to be extracting groundwater from subterranean streams are located within the lower portions of the valleys and along active river channels. In these areas highly permeable stream channel and flood plain deposits are bounded by more consolidated, lower permeability bedrock formations. Pumping tests demonstrate that the alluvial deposits are highly permeable,

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capable of transmitting large volumes of water relative to the underlying bedrock formations. Therefore, Division staff believe the bedrock formations are relatively impermeable compared to the alluvial deposits filling the stream channel, and are consistent with the subterranean stream designation. The criteria for a subterranean stream is not that the bed and banks be absolutely impermeable, but rather, relatively impermeable compared to the material filling the channel. The course of the subterranean streams on the Santa Margarita Ranch can be determined by reasonable inference and groundwater is known to be flowing in the subsurface channels.

Unauthorized Diversions - Complaint Unit staff are not aware of the basis of right for the following facilities:

- the reservoir located in the northern portion of the ranch just west of Garden Farms;
- the reservoir located in Sycamore Canyon at the location of "Kathy's cabin"; and
- two ponds located near the southern boundary of the ranch, in a tributary to Rinconada Creek approximately 1/2 mile east of the reservoir covered by License 12456 (Application 26566).

Unless documentation of a valid right for each of the following facilities can be provided, applications for appropriative water rights should be filed or these reservoirs should be breached.

The following wells appear to be capable of capturing "percolating groundwater":

Five Mile Field - 3D2, 34M, 34F, and 34C
Upper Trout Creek - 34F
Middle Trout Creek - 27R, 21P
Lower Trout Creek - 8G
Santa Margarita/Yerba Buena - 6F1, 6F2, 33F, 29H, 20H1

As such, water obtained from these wells can be used on any parcel of land or seasonally stored in a surface reservoir without obtaining a permit from the SWRCB.

The following wells appear to be diverting water in a subterranean stream and/or underflow of a surface watercourse:

Upper Trout Creek - 3D2, 34M and 34C
Lower Trout Creek - 21G, 16Qm 16L, or 8Q
Santa Margarita/Yerba Buena - 17M1, 18H1

While justification of diversions from these wells via a riparian right may be possible, there is also a possibility that water from these wells might be: (1) used on non-riparian parcels; (2) used outside the watershed of origin, or (3) collected to a reservoir for seasonal storage and later

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use. In this event, a permit from the SWRCB must be obtained before these diversions and use are commenced.

Unreasonable Use - Complaint Unit staff are not aware of evidence that would support a finding of misuse (i.e., waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water). Diversions on the Santa Margarita Ranch may contribute to shortages of water within the basin / watershed and thereby adversely impact other entities with valid rights. If the parties affected by these shortages wish to obtain relief, the appropriate venue would be a court of competent jurisdiction as this involves a dispute between competing correlative right holders over which the SWRCB does not have primary authority. If the court so chooses, the adjudicatory action could be referenced to the SWRCB.

Public Trust Impacts - While diversions from the wells on the Santa Margarita Ranch will reduce streamflows that may adversely impact public trust resources, Complaint Unit staff are not aware of a sufficient body of evidence to justify action by the SWRCB to balance the needs of these resources and the Santa Margarita Ranch. Should a sufficient body of evidence become available in the future, a new complaint could be filed.