APPENDIX F
WATER RESOURCES REGULATIONS

Appendix F – Water Resources Regulations

Federal

Clean Water Act (CWA)

The Federal CWA was enacted with the primary purpose of restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters. Section 319 mandates specific actions for the control of pollution from nonpoint sources. The EPA has delegated responsibility for implementation of portions of the CWA, including water quality control planning and control programs, such as the National Pollution Discharge Elimination System (NPDES) Program, to the State Water Resources Control Board (SWRCB), and the nine Regional Water Quality Control Boards (RWQCBs).

Section 303(c)(2)(b) of the CWA requires states to adopt water quality standards for all surface waters of the United States based on the water body's designated beneficial use and to update those These water quality standards are required to be updated on a triennial basis. Where multiple uses exist, water quality standards must protect the most sensitive use. Water quality standards are typically numeric, although narrative criteria based upon biomonitoring methods may be employed where numerical standards cannot be established or where they are needed to supplement numerical standards. Water quality standards applicable to the proposed are listed in the California Central Coast RWQCB's (CCRQWCB) Basin Plan, described below in the Regional section. All proposed project discharges and effects on the Big Sur River are subject to water quality standards identified in the Basin Plan.

Common Law Pertaining to Water Rights and Public Trust

With its roots in Roman law, the doctrine of public trust holds that certain resources are the property of all. In its modern form, the public trust doctrine holds that a state, as sovereign, takes title to tidelands and the beds of nontidal navigable waters at the time the state is admitted to the Union. Holding these lands and the waters above them in trust, the state's duty is to exercise continued supervision over the trust for the benefit of the people. Entities acquiring rights, for example in navigable streams, lakes, marshlands and tidelands, generally hold those rights subject to the trust and can assert no vested right in a manner harmful to the public trust. In other words, rights acquired in public trust resources cannot be placed entirely beyond the direction and control of the state.

The scope of the public trust doctrine continues to evolve as popular perceptions of the values and uses of waterways change. The public trust was traditionally defined to protect navigation, commerce, and fisheries; but recently it has been held to include the right to fish, hunt, bathe, swim, boat, recreate, navigate, and use the bottom of navigable waters for anchoring, standing, or other purposes.

In this century, the California courts have interpreted the legal term "navigable" very broadly to include recreational rafting and kayaking which can take place in very shallow water. Within the last decade, the California Supreme Court has recognized that uses of public trust resources include the preservation of the land, especially tideland, in its natural state to serve as ecological units for scientific study, as open space, and as habitat for birds and aquatic life. In administering the public trust, the courts have allowed the state to favor one use over another.

In its presently-developed form, the public trust doctrine requires the courts and the SWRCB to perform a balancing test to weigh the potential value to society against the impact on trust resources of a proposed or existing diversion. The action which will feasibly protect public trust values must be implemented. On February 17, 1983, the California Supreme Court filed its decision in National Audubon Society v. Superior Court of Alpine County, 33 Cal. 3d 419, 189 Cal. Rptr. 346 (1983). The Court merged the public trust doctrine with the California water rights system. The Court also held that all uses of water, including public trust uses, must conform to the standard of reasonable use. The Court further held that the SWRCB has a duty to consider public trust values before it approves water right applications. Finally, the Court held that the SWRCB has a continuing duty to supervise the taking and use of appropriated water.

State

California Constitution, Article X. Section 2, Water

Section 2 of Article X of the California Constitution requires that the water resources of the State be put to fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or water course in the state is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water. Section 5 also states that all appropriated water used for sale, rental, or distribution is a public use, and subject to the regulation and control of the State, in the manner to be prescribed by law.

California Water Code

California Water Code governs the use of state water resources, including appropriation of water rights (Division 6. Conservation, Development, and Utilization of State Water Resources) and management of water quality (Division 7. Water Quality). Under Division 6, Part 2, Chapter 1. All water flowing in a natural channel (or subterranean stream) is public water unless otherwise appropriated or is or can be applied to useful and beneficial purposes on adjacent riparian lands, and subject to appropriation in accordance with the provisions of the California Water Code (Section 1210). The proposed project diversions are subject to compliance with the California Water Code.

Statutory California Water Right Law

Under California Water Right Law, a party does not have to obtain an appropriative water right permit issued by the SWRCB for diversions initiated under a valid riparian water right. Under claim of riparian right, a water user is entitled to the reasonable use of water from the surface or underflow of a stream for use on parcels which are contiguous to or abut the stream. Water cannot be diverted under a riparian right outside of the watershed of the stream or to parcels of land not contiguous or abutting the stream.

A portion of the ESR was riparian to the Big Sur River prior to deeding the parcel to the Department of Parks and Recreation. The deed did reserve the existing rights to use of the water from the Old Well. Therefore, ESR has reserved the riparian claim of right to diversion of the underflow of the Big Sur River for reasonable use upon the ESR riparian lands. However, only land within the watershed of the stream source can be considered riparian land. Based on observations of the terrain and the current USGS Topographic Map of the area, approximately 90 acres of ESR is tributary to the Big Sur River. The remaining 160 acres is not riparian to the Big Sur River. An intermittent stream (Swiss Canyon) crosses the ESR effectively cutting off a northern portion of the ranch land which is tributary solely to this stream. Another portion of the ESR is tributary directly to the Pacific Ocean (Moeller 1992).

Under the riparian claim of right, it is not necessary that the water be diverted on the riparian tract itself, provided that a diversion elsewhere does not impair the rights of others and the diverter has obtain the necessary easements. Permission to locate the New Well on State property was given by the Department of Parks and Recreation in the form of two temporary use permits and the necessary easements to the New Well were obtained. Therefore, water may be diverted onto the ESR from both the Old and New Wells to serve the ESR riparian rights (Moeller 1992).

Public Resources Code

Division 10. Streamflow Protection Standards

Division 10 of the California Public Resources Code provides for the establishment of streamflow protection standards to ensure adequate protection for stream-related fish and wildlife resources. Section 10001 requires the Director of Fish and Game to identify and list those streams and watercourses throughout the state for which minimum flow levels need to be established in order to assure the continued viability of stream-related fish and wildlife resources. Additionally, Section 10002 requires that the Director of Fish and Game prepare proposed streamflow requirements, in terms of cfs, for each stream or watercourse identified pursuant to Section 10001.

The Director of Fish and Game has not yet proposed streamflow requirements for the lower Big Sur River.

Division 20. California Coastal Act

Public Resources Code Division 20 is the California Coastal Act. The Coastal Act was authorized by the voters of the State in 1972 and then authorized by the Legislature through adoption of the Coastal Act in 1976. The Coastal Act created the California Coastal Commission (CCC) and charged this State agency with managing the resources found along the coast. It establishes the Coastal Zone as the area in which the CCC applies management policies and regulations. Within the area of El Sur Ranch, the Coastal Zone extends from the shoreline to the top of the first inland ridge. The Coastal Act would require permits for all development that occurs within the Coastal Zone. The Coastal Act also requires that local governments along the coast create Local Coastal Plan (LCP). Monterey County has prepared the California Big Sur Coast Land Use Plan Local Coastal Program (LUP/LCP) (1986). In general, the policies set forth in the LCP require that the County review and coordinate review of water diversion and increase use requests with the SWRCB.

Statutory Water Quality Law/ Porter-Cologne Water Quality Control Act

Porter-Cologne Water Quality Control Act

The Porter-Cologne Water Quality Control Act establishes the State Water Resources Control Board (SWRCB) and each Regional Water Quality Control Board (RWQCB) as the principal state agencies for coordinating and controlling water quality in California. Specifically, the Porter-Cologne Water Quality Control Act authorizes the SWRCB to adopt, review, and revise policies for all waters of the state (including both surface and groundwaters) and directs the RWQCBs to develop regional Basin Plans.

The Central Coast RWQCB (CCRWQCB) has the authority to implement water quality protection standards through the issuance of permits for discharges to waters at locations within its jurisdiction. Water quality objectives for the El Sur River and its tributaries are specified in the Water Quality Control Plan for the Central Coast Region (Basin Plan, described below), which was prepared by the CCRWQCB in compliance with the CWA and the Porter-Cologne Water Quality Control Act. The principal elements of the Basin Plan are a statement of beneficial water uses protected under the plan; water quality objectives necessary to protect the designated beneficial water uses; and strategies and time schedules for achieving the water quality objectives. The water quality objectives are achieved primarily through the establishment and enforcement of waste discharge requirements. Because the project site is located within the CCWQCB's jurisdiction, all discharges to surface water or groundwater are subject to the Basin Plan requirements.

The Porter-Cologne Water Quality Control Act provides that, "All discharges of waste into the waters of the State are privileges, not rights." Furthermore, all dischargers are subject to regulation under the Porter-Cologne Water Quality Control Act, including both point and nonpoint source dischargers. In obligating the SWRCB and RWQCBs to address all discharges

of waste that can affect water quality, including nonpoint sources, the legislature provided the SWRCB and RWQCBs with administrative permitting authority in the form of administrative tools (waste discharge requirements [WDRs], waivers of WDRs, and basin plan prohibitions) to address ongoing and proposed waste discharges. The requirement for a WDR is also codified in California Water Code Section 13260. WDRs may include effluent limitations or other requirements that are designed to implement applicable water quality control plans, including designated beneficial uses and the water quality objectives established to protect those uses and prevent the creation of nuisance conditions. For discharges into surface waters, an NPDES permit application must be filed with the appropriate RWQCB. Violations of WDRs may be addressed, for example, by issuing Cleanup and Abatement Orders (CAOs), Cease and Desist Orders (CDOs), assessing administrative civil liability, or seeking imposition of judicial civil liability or judicial injunctive relief.

Water Quality Control Plan for the Central Coast Region (Basin Plan)

The Water Quality Control Plan for the Central Coast Region (Basin Plan) was prepared by the CCRWQCB in compliance with the Federal CWA and the State Porter-Cologne Water Quality Control Act. The Basin Plan establishes water quality objectives, and implementation programs to meet stated objectives and to protect the beneficial uses of water in the basin. Beneficial uses and water quality objectives, together, comprise the relevant water quality standards. Section 13170 of the California Water Code also authorizes the SWRCB to adopt water quality control plans on its own initiative.

Beneficial Uses

Surface Water

Designated beneficial uses for the Big Sur River include municipal and domestic supply; agriculture supply; groundwater recharge; freshwater replenishment; water contact and non-contact water recreation; wildlife habitat; cold and warm fresh water habitat; spawning, reproduction, and/or early development; commercial and sport fishing; preservation of biological habitats of special significance; rare, threatened, or endangered species; and, migration of aquatic organisms. Designated beneficial uses for the Big Sur Estuary include water contact and non-contact water recreation; wildlife habitat; cold and warm fresh water habitat; spawning, reproduction, and/or early development; commercial and sport fishing; preservation of biological habitats of special significance; rare, threatened, or endangered species; estuarine habitat; shellfish harvesting; and, migration of aquatic organisms. Coastal waters from Point Pinos to Point Piedras Blancas have designated beneficial uses of water contact and non-contact water recreation; commercial and sport fishing; rare, threatened, or endangered species; navigation; and, marine habitat.

TABLE F-1
BENEFICIAL USES FOR THE BIG SUR RIVER AND THE BIG SUR RIVER ESTUARY
APPLICABILITY TO HYDROLOGY AND WATER QUALITY

Beneficial Use	Applicability
MUN	Municipal and domestic water supply – Potential effects on groundwater levels and water supply; however, within the Big Sur River lower reaches there are no municipal and domestic supply users that would be affected.
AGR	Agricultural water supply – Application of irrigation water from the Big Sur River to the POU is an identified beneficial use and the focus of this EIR.
GWR	Groundwater recharge – Indirectly tied to fisheries, surface water and groundwater quality, and groundwater supplies through the interaction of the river and groundwater that is extracted for irrigation.
EST	Estuarine – Use of water that supports estuarine habitats, which would apply to the lagoon system of Big Sur River.
RARE	Rare, threatened, or endangered species – Use of water that supports habitat required for survival of species protected under state and federal regulations. Diversions of Big Sur River water could affect habitat support. This beneficial use is addressed in the Biology Section.
REC1	Water contact recreation – Effects on Big Sur River river levels for recreation.
REC2	Non-water contact recreation – Effects on Big Sur River river levels for recreation and support of fisheries.
WILD	Wildlife habitat – Use of water that supports terrestrial ecosystems, such as the riparian corridor that borders the Big Sur River and the species supported by that habitat. This beneficial use addressed in the Biology Section.
WARM	Warm freshwater habitat – Use of water that supports warm water ecosystems, including effects on water quality parameters such as temperature and dissolved oxygen. This does not apply to the river within this area because there are no warm water fisheries to support.
MIGR	Migration of aquatic organisms – Use of water that allows for seasonal migration of aquatic species, especially anadromous fish like steelhead and effects on water quality parameters such as temperature and dissolved oxygen that might affect migration conditions. This beneficial use addressed in the Biology Section.
BIOL	Preservation of Biological Habitats of Special Significance – Use of water to support designated areas such as parks, preserves, sanctuaries, and others. Therefore, not directly applicable to the lower reaches of the Big Sur River.
FRSH	Freshwater replenishment – Use of Big Sur River water for irrigation instead of maintenance of surface water quality or quantity.
COLD	Cold freshwater habitat – Use of water to support cold water ecosystems. This is the aquatic community of the lower Big Sur River. This beneficial use also addressed in the Biology Section.
SPWN	Spawning Reproduction and/or Early Development – This includes the spawning of all species and rearing of juvenile fish. The steelhead found in the lower river are in the early development phase. This beneficial use is also addressed in the Biology Section.
COMM	Commercial and Sport Fishing – Use of water to support recreational and commercial sport fishing. Not directly applicable to the project although healthy steelhead populations in the Big Sur River likely supported a recreational fishery at some point in the past.
SHELL	Shellfish Harvesting – Use of water to support harvest of shellfish. Not directly applicable to the project area; however, because it is listed as a beneficial use, these standards apply

Source: CCRWQCB 1994.

TABLE F-2

BENEFICIAL USES FOR THE BIG SUR RIVER AND THE BIG SUR RIVER ESTUARY APPLICABILITY TO BIOLOGICAL RESOURCES

Beneficial Use	Applicability
MUN	Municipal Water Supply – No biological resources application.
AGR	Agricultural Water Supply – Application of irrigation water from the Big Sur River to the POU is an identified beneficial use and the focus of this DEIR. Indirectly tied to biological resources.
GWR	Groundwater Recharge – Indirectly tied to biological resources through the interaction of the river and groundwater that is extracted for irrigation.
EST	Estuarine – Use of water that supports estuarine habitats applies to the lagoon system of Big Sur River.
RARE	Rare, Threatened, or Endangered Species – Use of water to support habitat required for survival of species protected under state and federal regulations. The steelhead and red-legged frogs both fall into this category.
REC1	Water Contact Recreation – Rafting, swimming, etc, all of which are not applicable to fisheries.
REC2	Non-water Contact Recreation – Wildlife viewing, hiking, sport fishing etc most of which are not applicable to biological resources. Recreational fishing is included here, but the project does not change fishing access or open/closed seasons which are set independently by CDFG.
WILD	Wildlife Habitat – Use of water that supports terrestrial ecosystems, such as the riparian corridor that borders the Big Sur River and the species supported by that habitat.
WARM	Warm Freshwater Habitat – Use of water to support warm water ecosystems. This does not apply to the river within this area.
MIGR	Migration of Aquatic Organisms – Use of water that allows for seasonal migration of aquatic species, especially anadromous fish like steelhead.
BIOL	Preservation of Biological Habitats of Special Significance – Use of water to support designated areas such as parks, preserves, sanctuaries, etc. Not directly applicable to biological resources for the Big Sur River although water in the river does support AMSP.
FRSH	Freshwater Replenishment – Use of water for maintenance of surface water quality or quantity. Not directly applicable to biological resources of this project.
COLD	Cold Freshwater Habitat – Use of water to support cold water ecosystems. This is the aquatic community of the lower river.
SPWN	Spawning Reproduction and/or Early Development – This includes the spawning of all species and rearing of juvenile fish. The steelhead found in the lower river are in the early development phase and the other resident fish spawn in the river.
COMM	Commercial and Sport Fishing – Use of water to support recreational and commercial sport fishing. Not directly applicable to the biological resources of the area.
SHELL	Shellfish Harvesting – Use of water to support harvest of shellfish. Not directly applicable to the project area.

Source: CCRWQCB 1994.

Surface water bodies within the Region that do not have beneficial uses designated for them, including Swiss Canyon, are assigned municipal and domestic water supply and protection of both recreation and aquatic life beneficial uses. However, the Basin Plan is not specific as to which level of recreation and aquatic life beneficial uses must be protected. It is not specified if water contact or non-water contact recreation must be protected, nor is it specified whether cold, warm, migration, spawning, shellfish, or other aquatic life protection is required.

Groundwater

There are no DWR identified groundwater basins within the project area and no groundwater basin specified within the Basin Plan. However, the Basin Plan notes that:

> Ground water throughout the Central Coastal Basin, except for that found in the Soda Lake Subbasin, is suitable for agricultural water supply, municipal and domestic water supply, and industrial use.

Furthermore, salt concentrations for irrigation waters must be controlled through implementation of the anti-degradation policy to the effect that mineral constituents of currently, or potentially, usable waters is not increased. It is also emphasized that no controllable water quality factor is allowed to degrade the quality of any groundwater resource or adversely affect long-term soil productivity. Therefore, the Big Sur River alluvial aquifer would be considered suitable for agricultural water supply, municipal and domestic supply, and industrial use.

Water Quality Objectives

Applicable water quality objectives are based on the most stringent beneficial use and include non-numeric, numeric, and site specific objectives. Pertinent water quality objectives for water resources within the project area are identified below. For a complete list of water quality objectives, refer to the Basin Plan.

Surface Water

Pertinent water quality objectives for the Big Sur River are listed below:

- The pH value shall not be depressed below 7.0 or raised above 8.3. Changes in normal ambient pH levels shall not exceed 0.5 in fresh waters.
- The dissolved oxygen concentration shall not be reduced below 7.0 mg/l at any time.
- At no time or place shall the temperature be increased by more than $5^{o}F$ above natural receiving water temperature.
- At all areas where shellfish may be harvested for human consumption, the median total coliform concentration throughout the water column for any 30-day period shall not exceed 70/100 ml, nor shall more than ten percent of the samples collected during any 30-day period exceed 230/100 ml for a five-tube decimal dilution test or 330/100 ml when a three-tube decimal dilution test is used.

Because the specific beneficial use categories are not identified for Swiss Canyon, except for municipal and domestic supplies, the pertinent water quality objectives for Swiss Canyon are listed below, for surface waters with no identified beneficial uses:

- For waters not mentioned by a specific beneficial use, the pH value shall not be depressed below 7.0 or raised above 8.5. The pH value for municipal and domestic supplies shall neither be depressed below 6.5 nor raised above 8.3.
- For waters not mentioned by a specific beneficial use, dissolved oxygen concentration shall not be reduced below 5.0 mg/l at any time. Median values should not fall below 85 percent saturation as a result of controllable water quality conditions.
- Temperature objectives for enclosed bays and estuaries are as specified in the Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California (SWRCB 1972 [Thermal Plan]) including any revisions. Pertinent objectives from the Thermal Plan are listed below:

5. A. (1)

b. Elevated temperature waste discharges either individually or combined with other discharges shall not create a zone, defined by water temperatures of more than 1°F above natural receiving water temperature, which exceeds 25 percent of the cross-sectional area of a main river channel at any point.

c. No discharge shall cause a surface water temperature rise greater than 4°F above the natural temperature of the receiving waters at any time or place.

d. Additional limitations shall be imposed when necessary to assure protection of beneficial uses.

- Additionally, the natural receiving water temperature of intrastate waters shall not be altered unless it can be demonstrated to the satisfaction of the Regional Board that such alteration in temperature does not adversely affect beneficial uses.

Groundwater

Pertinent water quality objectives for the alluvial groundwater aquifer, for groundwater used for agricultural supplies, are listed below:

- Ground waters shall not contain concentrations of chemical constituents in amounts that adversely affect such beneficial use. Interpretation of adverse effect shall be as derived from the University of California Agricultural Extension Service guidelines provided in Table 3-3 of the Basin Plan.
- In addition, water used for irrigation and livestock watering shall not exceed the concentrations for those chemicals listed in Table 3-4 of the Basin Plan.
- No controllable water quality factor shall degrade the quality of any ground water resource or adversely affect long-term soil productivity. The salinity control aspects of ground water management will account for effects from all sources.

Antidegradation Policy

California's Antidegradation Policy is found in Resolution 68-16, "Policy with Respect to Maintaining Higher Quality Waters in California." California's Antidegradation Policy applies to both surface waters and groundwater, and protects both existing and potential uses. California has also issued guidance on implementing federal antidegradation requirements. The best quality of receiving waters in 1975 is the baseline for implementing the federal antidegradation policy, and the federal antidegradation policy is applied in California on a case-by-case basis.

California's Antidegradation Policy only applies to high quality waters (water with higher water quality than established in policies). It requires that existing high quality be maintained to the maximum extent possible. It does allow lowering of water quality if change is consistent with maximum benefit to people of state, will not unreasonably affect present and potential beneficial uses, and will not result in water quality lower than applicable standards. Any discharges of waste to such waters would be required to meet waste discharge requirements that will result in the best practicable treatment or control of the discharge necessary to ensure that a pollution or nuisance condition will not occur and that the highest water quality consistent with the maximum benefit to people of the State will be maintained.

California Toxics Rule (CTR)

Other applicable water quality criteria include the California Toxics Rule (CTR), which establishes numeric criteria for aquatic life and human health protection for about 130 priority trace metal and organic constituents. Numeric water quality objectives include specific concentration-based values that may be imposed on the effluent or at the edge of an allowable mixing zone within the receiving water.

Inland Surface Water Quality Standards

The SWRCB has developed water quality objectives for inland surface waters through the 1991 Inland Surface Waters Plan (ISWP). Included among the provisions of these objectives are: that all point and nonpoint discharges must comply with identified water quality objectives; and that effluent limits are to be imposed, either through NPDES permits or WDRs, such that the water quality objectives shall not be exceeded in the receiving water outside a designated mixing zone. The more stringent objectives, either the ISWP or the Basin Plan, are applied to discharges that contain priority pollutants.

Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (State Implementation Plan or SIP).

In March of 2000, the State Water Board adopted the SIP in Resolution No. 2000-015, which establishes (1) implementation provisions for priority pollutant criteria promulgated by the EPA through the National Toxics Rule (40 CFR 131.36) (promulgated on December 22, 1992 and amended on May 4, 1995) and through the California Toxics Rule (40 CFR 131.38) (promulgated on May 18, 2000 and amended on February 13, 2001), and for priority pollutant objectives established by Regional Water Boards in their basin plans; (2) monitoring requirements for 2,3,7,8-TCDD (dioxin) equivalents; and (3) chronic toxicity control provisions. In addition, this policy includes special provisions for certain types of discharges and factors that could affect the application of other provisions in this policy. A list of priority pollutants and associated criteria can be found in the CFR, Section 40, Part 131.

California Code of Regulations (CCR) Title 23. Waters. Division 3 and Division 5

The California Code of Regulations, Title 23. Waters contains the regulations for the administration of water rights and water quality activities of the State Water Resources Control Board. The right to use water is a property right and may be protected against infringement in the same manner as any other property right; i.e., by appropriate court action. The SWRCB does not have the authority to determine the validity of vested rights other than appropriative rights initiated December 19, 1914 or later. The SWRCB, however, may assist the courts in such determination as described in the paragraphs entitled, "Determination of Existing Rights".

The SWRCB will investigate and take appropriate action on a written complaint received alleging (1) a violation of the conditions of a permit or license issued by the SWRCB, (2) waste or unreasonable use of water, (3) illegal diversion or use, or (4) unreasonable effects on public trust or public interest uses of the water. (See title 23, chapter 3, subchapter 2, articles 18 and 22 of the California Code of Regulations; California Water Code section 275 et. seq.; and California Water Code section 1050 et. seq.)

Division 5. Prevention of Waste, Unreasonable Use or Diversion of Water defines what constitutes a 'misuse' of water.

> (c) "misuse of water" or "misuse" shall mean any waste, unreasonable use, unreasonable method of use, unreasonable method of diversion of water, or any public nuisance as defined in Water Code Section 305.

The proposed project would have to comply with the CCR Title 23, including prevention of waste and unreasonable use.

Local

Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Irrigated Lands WDR)

On July 9, 2004, the CCRWQCB adopted Order No. R3-2004-0117, Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands. All commercial, irrigated farming operations were required to comply beginning January 1, 2005. Lands that are being prepared for planting also need to enroll. An excerpt from the Order regarding enrollment is as follows:

All applicants must submit the following information as part of their Notice of Intent (NOI) to enroll:

- Completed application form, including location of the operation and identification of responsible parties (owners/operators)
- Copy of map of operation (map should be the same as the one submitted to the County Agricultural Commissioner for Pesticide Use Reporting, or equivalent)
- Completed management practice checklist/self assessment form
- Certificates of attendance at Regional Board approved farm water quality education courses, if applicable
- Statement of farm water quality plan completion, if applicable
- Election for cooperative or individual monitoring

Inspections are an integral part of all CCRWQCB regulatory programs and the CCRWQCB conducts on-farm inspections throughout the region, both on a random basis to verify submitted information, to better understand what farmers are implementing, and in response to complaints

or identified problems. The primary goal of inspections is to see what practices farmers are implementing, work with them to solve problems, and make referrals to technical assistance providers when appropriate. The CCRWQCB can move to enforcement if serious problems are identified and not corrected within a reasonable time. The current focus of enforcement effort is twofold: to bring the remaining growers who have not yet enrolled into the program and to ensure that those who are in the program are meeting their monitoring obligations (either by conducting individual monitoring or by participating in the Cooperative Monitoring Program).

The Irrigated Lands WDR is a mandatory program for all commercial, irrigated farming operations in the Central Coast. Those that do not enroll are out of compliance and subject to enforcement. Initial letters are sent out to potential non-filers. Those that have not responded are sent Notice of Violation letters by certified mail. Those that do not respond to the Notice of Violation will be scheduled for Administrative Civil Liability Complaints (ACL), which will involve fines. All those receiving ACL Complaints must either pay the fines or appear at a hearing before the Regional Water Quality Control Board.

Monitoring is a mandatory part of the Irrigated Lands WDR. The Cooperative Monitoring Program was established to allow growers a lower-cost alternative to individual monitoring. All those who have selected cooperative monitoring on their Notice of Intent are obligated to pay fees established by the Cooperative Monitoring Program, run by Central Coast Water Quality Preservation, Inc. Those who do not do so are out of compliance with the Irrigated Lands WDR and therefore subject to enforcement. Those that do not respond to Notice of Violation letters by the required date in the letter will be issued ACL Complaints. Proposed fines will include both outstanding monitoring fees and additional fines. All those receiving ACL Complaints must either pay the fines or appear at a hearing before the Regional Water Quality Control Board.

Monterey County, California Big Sur Coast Land Use Plan Local Coastal Program (LUP/LCP)

This plan is the Land Use Plan for the Big Sur Coast segment of Monterey County's Local Coastal Program. As the primary component of a certified Local Coastal Program, it provides development standards to guide the actions of all State and local agencies. Under the provisions of the Federal Coastal Zone Management Act, actions by all federal agencies must be submitted for review by the California Coastal Commission. The Coastal Commission relies on the certified Big Sur Coast Land Use Plan for guidance when reviewing federal projects for consistency with the policies of the California Coastal Management Program. Pertinent policies applicable to hydrology and water quality are listed below:

Section 3.3 Environmentally Sensitive Habitats

3.3.2 General Policies

2. Where private or public development is proposed, in documented or expected locations of environmentally sensitive habitats, field surveys by qualified individuals or agencies shall be made in order to determine precise locations of the habitat and to recommend mitigating measures to ensure its protection.

4. For developments approved within environmentally sensitive habitats, the removal of indigenous vegetation and land disturbance (grading, excavation, paving, etc.) associated with the development shall be limited to that needed for the structural improvements themselves. The guiding philosophy shall be to limit the area of disturbance, to maximize the maintenance of the natural topography of the site, and to favor structural designs which achieve these goals.

7. Land uses adjacent to environmentally sensitive habitats shall be compatible with the long-term maintenance of the resource. New land uses shall be considered compatible only where they incorporate all site planning and design features needed to prevent significant habitat impacts, and where they do not establish a precedent for continued land development which, on a cumulative basis, could degrade the adjoining habitat.

3.3.3 Specific Policies

A. Terrestrial Plant, Riparian, and Wildlife Habitats

2. In serpentine rock associated habitats, land use activities shall be low intensity and designed to ensure protection of habitat values.

3. Development or land use activities shall be sited to protect riparian habitat values. Development adjacent to stream courses shall be restricted to low intensities and constructed to minimize erosion, runoff, and water pollution. In order to protect riparian habitats, land use development activities will not be permitted that will have the effect of diminishing surface flows in coastal streams to levels that will result in loss of plant or wildlife habitat.

4. Setbacks of 150' on each side of the streambank shall be required for all streams to protect riparian plant communities unless a narrower corridor can be demonstrated to be sufficient to protect existing vegetation and provide for restoration of previously disturbed vegetation.

7. Land uses in areas where natural grassland is found shall be compatible with the maintenance of the habitat. Development shall be sited and designed to avoid disturbance or destruction of grasslands. Compatible uses include managed grazing and low-intensity recreational and residential uses.

B. Marine Habitats

2. Alteration of the shoreline including diking, dredging, and filling, shall not be permitted except for work essential for the maintenance of Highway 1.

5. The coastal lagoons and estuaries of the Big Sur Coast shall remain undeveloped. Development in the adjacent buffer area shall be limited to the minimum required to support low-intensity recreational, scientific or educational uses, as consistent with policy 3.3.2.7 above. The coastal lagoon and estuary buffer area shall, at a minimum, include all areas within 150 feet of the landward extent of hydrophytic vegetation or the average high water mark if no such vegetation exists.

Section 3.4 Water Resources

3.4.3 Specific Policies

A. Water Supply and Use

2. Development of water supplies, or intensification of use of existing supplies from springs, streams, wells, or community water systems shall be regulated by permit in accordance with Coastal Act requirements.

3. Applicants intending to utilize a water supply from a source not occurring on the parcel to be served, shall obtain any necessary rights or permits to appropriate the water from the State Division of Water Rights prior to receiving project approval from the County. The County's policy shall be to protest such applications that conflict with the protection of beneficial uses of water including instream flow requirements.

4. Interbasin transfer of water: No new water system and no expansion of existing water systems which transport water out of the watershed of any perennial stream shall be allowed. Undeveloped parcels outside of the watershed of origin shall not be allowed to utilize transported water. Permit applications shall demonstrate a suitable source of water not requiring establishment or expansion of, or intensification of use, of an interbasin water transfer system. Where no on-site surface water source exists, exceptions may be

made for the development of a primary residence on a vacant parcel served by a County-approved connection to an existing water system -- if the total number of existing/potential vacant buildable residential parcels on such water system is four or less and as authorized in the Big Sur River Protected Waterway Management Plan. Water system development or expansions constructed or installed after December 31, 1976, without benefit of coastal development permit will not be considered as "existing".

6. All applicants for permits to develop water shall base their proposed systems on the current health laws and on the guidelines contained in "Guidelines for Applications, Appropriations, Permits, Control and Protection of Water Supply, Storage Distribution, and Use", on file in the County Planning Department.

B. Rivers and Streams

1. The effects of all new development proposals or intensification of land use activities or water uses on the natural character and values of the Big Sur coast's rivers and streams will be specifically considered in all land use decisions. Subjects to be addressed in such evaluations include protection of scenic quality, water quantity and quality, wildlife and fish habitat, and recreational values.

2. In general, the high rate stream discharges during the winter should not be interrupted because of their beneficial effects on the stream and its living community and on beach replenishment. Therefore, any water diversions beyond the ordinary year-round entitlements must be consistent with policy 3.4.3.B.7 and carefully regulated to avoid impairment of beach sand supply and anadromous fish runs, and shall be limited to agricultural irrigation, and developments where the primary function is the improvement of fish and wildlife habitat.

3. Water quality, adequate year-round flows, and stream bed gravel conditions shall be protected in streams supporting rainbow and steelhead trout. These streams include: Garrapata Creek, Rocky Creek, Bixby Creek, Little Sur River, Big Sur River, Partington Creek, Anderson Creek, Hot Springs Creek, Vicente Creek, Big Creek, and Limekiln Creek.

4. The Big Sur and Little Sur Rivers are part of the California Protected Waterways system and the State Legislature has requested the County to prepare individual management plans that set forth criteria and guidelines for their protection. The goals, objectives and policies of these plans shall be followed in considering all land use applications within the areas they cover consistent with the other policies presented here.

6. Priority for Wells Over Surface Water Diversions: Where groundwater is available on the site, developments for the purpose of diverting surface water sources -- perennial streams and springs that feed perennial streams -- shall be avoided. Wells and infiltration fields located within or near a stream channel so as to tap stream sub-flow rather than groundwater will be considered as stream diversion structures for the purposes of this policy…This policy should not be read to prohibit instream uses which do not alter water quality or quantity.

7. Water Resource Verification: No substantial water use intensification (e.g., residential subdivision with potential to increase number of households; residential or inn development of more than one unit; restaurant, bar or other food service development or expansion; recreational vehicle campground; development for commercial irrigated agriculture) shall proceed without specific verification that adequate water supplies are available, and that the proposed development will not adversely affect, cumulatively or individually, existing water supplies needed for the maintenance of riparian vegetation and anadromous fisheries, or the supply needed by existing users during the driest expected year. Such verification shall be supported by a report, prepared by a qualified professional hydrologist on the basis of well logs, stratigraphic profiles, and technical data as needed. The County shall consult with Department of Fish and Game as to the adequacy of the report before allowing water use intensification; and, if necessary, may at applicant's expense engage the services of an appropriate independent expert to review the report as well. In the case of water withdrawals from streams and springs, water use shall be measured and maximum use levels shall be consistent with instream flow requirements.

3.4.4 Recommended Actions

1. The State Department of Fish and Game, or other appropriate agencies should undertake studies to determine instream flow requirements to maintain the natural environment on all of Big Sur's streams that support resident or anadromous fish populations. Such studies should enlist the cooperation, participation, and guidance of local residents. The Department of Fish and Game should file for necessary water rights to protect the fisheries resource.

Big Sur River Protected Waterway Management Plan (PWMP)

Monterey County developed a protected waterway management plan (PWMP) for the Big Sur River as part of their overall LCP planning process and in compliance with the California Protected Waterways Plan. The goal of the Big Sur River PWMP is "To maintain and enhance the value of the Lower Big Sur River and its watershed as a domestic water supply, fish and wildlife habitat, and recreational and scenic resource and to mitigate adverse effects of activities and facilities on these resources" (Monterey County 1986). Pertinent policies regarding hydrology and water quality are listed below:

Water Conservation Element

Policy 1 suggests that the California State Division of Water Rights should recognize the wells drawing water from the gravels and sands adjacent to the Lower Big Sur River as riparian uses and should grant each existing user a permit for the current established level of withdrawal of water.

Policy 2 suggests that the County should initiate a hydrologic study to be done by the California Department of Water Resources, the U.S. Geological Survey or a qualified consultant, to determine the existing quality and quantity of the water resources and the present and projected consumptive use of water in the Lower Big Sur River Basin. No such study has yet been conducted for the Lower Big Sur River, except as have been conducted and presented by the applicant.

Policy 3 suggests that all available streamflow, water quality and other data should be reviewed periodically by the appropriate agencies and a determination made on whether degradation or diminishment of water resources has occurred. If it is determined that degradation or diminishment has occurred, a recommendation should be made to the Board of Supervisors that land use restrictions, such as a moratorium on development, or other measures that may be deemed necessary, should be imposed until solutions to the problem can be found.

Policy 4 suggests that an appropriate agency responsive to both local needs and statewide interests should be formed to monitor and manage surface and groundwater in the Lower Big Sur Basin if a severe and long term water quality or quantity condition develops that cannot be mitigated through existing local agency management measures. Also, consistent with the River's designation as a Protected Waterway, no dam or dams shall be constructed on the river.

Policy 6 suggests that the California State Division of Water Rights should approve only those requests for water appropriation from the Big Sur River Basin, its tributaries, the river gravels, and the groundwater basin, which are consistent with maintaining required instream flow needs as determined by the California State Department of Fish and Game (CDFG). Instream flow needs have not been determined by the CDFG.

No such instream flow needs have yet been identified by the CDFG for the Lower Big Sur River.

Policy 7 recommends that the U.S. Geological Survey should install and maintain an additional stream gauge on the Big Sur River near the river mouth. An additional stream gage has not yet been installed by the USGS.

Policy 9 requests that the County Flood Control and Water Conservation District should be the repository for the data from various agencies and should be the lead agency for hydrologic studies.

However, there is no lead agency for the Lower Big Sur River hydrologic studies conducted for this proposed project; hydrologic studies were conducted by the project applicant consultants.

Water Quality Protection and Enhancement Element

Policy 24 includes the recommendation for additional monitoring including coliform monitoring.

Policy 25 recommends that bacteriological water quality does not exceed 200 colonies per 100 mL sample more than 20 percent of the time in a 30-day period.

Policy 33 recommends that waterflow be adequate to flush the lower river of pollutants during the summer recreation period.

Fish and Wildlife Preservation and Enhancement Element

Policy 35 recommends that the CDFG or another appropriate agency should take measurements to determine the instream flow requirements for maintaining the anadromous fishery.

Policy 36 recommends that the CDFG consult with the USFWS in determining the instream flow requirements.

Policy 46 suggests that the California State Department of Parks and Recreation evaluate the merits of designating the lagoon at the mouth of the Big Sur River in Andrew Molera State Park a Natural Preserve in recognition of its wildlife values.

Scenic Resources Protection and Enhancement Element

Policy 69 states that the California State Department of Parks and Recreation should consider continuing grazing on the eastern portion of Andrew Molera State Park in order to retain the familiar "grassland type" character of the northern entrance to the Big Sur Valley. The proposed project is consistent with this policy.