

**CALIFORNIA COASTAL COMMISSION**

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STATE WATER RESOURCES  
CONTROL BOARD

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DIV. OF WATER RIGHTS  
SACRAMENTO



December 14, 2009

Paul Murphey  
Division of Water Rights  
State Water Resources Control Board  
P.O. Box 2000  
Sacramento, CA 95812-2000

Subject: Draft EIR for El Sur Ranch Water Right Application No. 30166 (SCH No. 2006061011)

Dear Mr. Murphey:

The Central Coast District office of the Coastal Commission is in receipt of the Draft Environmental Impact Report (DEIR) for the El Sur Ranch Water Right Application No. 30166 dated October 2009, prepared by PBS&J. This office previously received an Initial Study and Notice of Preparation (NOP) for a DEIR in June 2006 for the same application, and an earlier NOP for the same application in October 2002. We also received the "Technical Memorandum: Draft CEQA Project Description and Baseline Discussion for Possible Use in the Upcoming EIR for Water Right Application A030166 [30166]" dated August 24, 2007, for which we provided comments on September 22, 2008. We understand that the current application, based originally on a 1992 application that was last amended in 2006, requests an appropriative right to divert a 20-year running average of 1,200 acre-feet per year of water (afy), and to divert a maximum of 1,615 afy in any particular year, from points of diversion at the Big Sur River in Andrew Molera State Park. The appropriated water would be used to irrigate a 267-acre portion of the El Sur Ranch that is located just upcoast of Big Sur River and Andrew Molera State Park in Big Sur.

As we noted previously, the DEIR forms the basis for further review of the water right application not only by the SWRCB but also other regulatory entities, including the Coastal Commission, and as such, it is important that it thoroughly analyze the potential impacts of the project. And given the coastal resource values associated with the Big Sur River and the surrounding area, including the fact that the Big Sur River is one of last remaining undammed rivers in the Central Coast that supports the Federally-endangered South-Central Coast Steelhead trout, the importance of a thorough and accurate analysis is heightened.

To that end, the DEIR analysis must be based on a correct baseline, and we are disappointed that the document relies on a baseline that relies on historic and not legally recognized diversions from the river. The Project Description states that the "proposed project" is the water right application. As such, the DEIR should evaluate and provide impact determinations for the total amount of water requested in the water right application. Instead, the DEIR uses the average difference between the historic pumping and the maximum expected demand that is being requested in the water right application as the proposed project for impact evaluation purposes, and uses the historic average pumping as the baseline. The project itself cannot also constitute the baseline. Please explain why the DEIR describes one proposed project in the project description and then uses a different proposed project for the impact evaluation, and please include the appropriate CEQA regulations section(s) and any legal precedents that may have



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made this possible. As we commented previously, it seems clear that the baseline against which to measure project impacts is not what has been historically diverted, but rather that portion of what has been historically diverted that is based on an existing and established legal right for diversion. The proposed project, i.e. the water right application, should be evaluated against any existing legal diversions and legally permitted well and water distribution infrastructure. We note that the DEIR avoids our previous comment regarding the coastal development permit (CDP) history of the wells and infrastructure, particularly the "new well." Please describe definitively if the applicant did/did not receive all necessary permits, including a CDP, for this well, and please provide all relevant documentation for same. In short, the DEIR provides an unclear history related to the timing and permitting of this well, and these facts need to be clearly established in order to understand the project and its potential impacts.

The DEIR's incorrect representation of the proposed project and baseline leads to incorrect impact determinations. The DEIR states that baseline pumping rates have had a substantially larger effect on Big Sur River underflow, surface water elevations, and flow rates than would be caused by the anticipated additional increase that is being requested in the application. The DEIR demonstrates that the reductions in flow amounts and water levels caused by historical pumping have resulted in various effects on biological resources associated with the river, and allows the reader to conclude that these effects would be considered significant under CEQA thresholds, were they actually being evaluated in this DEIR. For example, evidence shows that Basin Plan fish passage and dissolved oxygen criteria have not been met over various study periods as a result of historic pumping, and the significance thresholds indicate that failure to meet these criteria would result in a significant project impact. However, the DEIR only evaluates a small increase above historic pumping levels, and finds less-than-significant impacts with that small amount of additional pumping. The DEIR shows, and the reader can infer, that if considered as a whole, the water right application would likely have significant and unavoidable hydrologic and biological impacts; however, it fails to make those findings because only a portion of the actual project is evaluated. This incorrect proposed project evaluation also results in incorrect analyses for cumulative impacts and alternatives (discussed below).

It remains unclear why efficiency measures (such as those described under the Alternate Irrigation Efficiency alternative) are not already being employed on the site. An irrigation efficiency of only 60-70% on the site seems unacceptable given the highly sensitive resources of the Big Sur River that are at stake, and the DEIR does not adequately explain the reasons why irrigation methods on the site are this inefficient. If evaluated properly (i.e., if the entire requested diversion amount were evaluated in this DEIR), the Alternate Irrigation Efficiency alternative would possibly show that efficiency measures could reduce the whole project's significant impacts to a less-than-significant level. The DEIR states that the Alternate Irrigation Efficiency alternative raises consistency issues with the local land use plan related to new development in the coastal zone. The Big Sur Land Use Plan (LUP) does contain strict policies regarding new development in the "critical viewshed," which this site is within; however, the LUP includes exceptions to those policies for essential ranching structures, including water pumps and associated infrastructure, under careful design and siting controls (LUP Policy 3.2.5.B). A properly sited and designed tailwater recovery system would likely qualify under this exception, and because of its benefits to the overall Big Sur River system, would also likely



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be consistent with other LUP resource protection policies. Please revise the DEIR to reflect that local plan consistency would not be a disadvantage of this alternative.

We disagree that the No Change in Existing Practices/Historical Diversions Alternative should be considered the environmentally superior alternative. The benefits of reduced pumping associated with the Alternate Irrigation Efficiency alternative far outweigh any impacts of constructing a tailwater recovery system, and as shown in the DEIR, any reduction in pumping would improve Big Sur River resources. Because it is clear that existing and historic pumping (which is essentially the No Change in Existing Practices/Historical Diversions Alternative plus some additional diversion amount) is having deleterious and significant impacts to Big Sur River resources, we do not see how this alternative can be selected as environmentally superior. The DEIR states that this alternative would perpetuate the environmental baseline conditions by continuing historical irrigation practices on the project site. It is clear from our reading of the DEIR that the baseline conditions constitute exceedance of required thresholds for surface water flow and associated fish passage and dissolved oxygen criteria, and perpetuation of these conditions should be considered significant and certainly should not be considered "environmentally superior." Selection of this alternative illustrates, once again, the problem with the incorrect proposed project and baseline that are used in this DEIR.

In sum, we continue to believe that the SWRCB is charged with an important and demanding task in evaluating the proposed water right application. We believe that the DEIR provides ample and helpful information regarding the effects of historic and existing diversions on Big Sur River resources, but that it is flawed because it does not actually evaluate those historic and existing diversions against CEQA requirements. The entire amount of water diversion requested in the water right application (much of which has been illegally diverted for over 50 years) has never been evaluated under CEQA, and the DEIR fails to do so now. It appears clear that a DEIR that actually analyzes the "proposed project" (i.e., the water right application) should be prepared and re-circulated.

Thank you for the opportunity to comment and we look forward to reviewing a revised DEIR. If you have any questions, please do not hesitate to contact me at the address and phone number above.

Sincerely,



Katie Morange  
Coastal Planner

cc: Victoria Whitney, SWRCB (SWRCB Deputy Director, Division of Water Rights)  
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