

**Werner Motzel, Jr., Trustee
The Motzel Trust
45920 Clear Ridge Road
Big Sur, CA 93920**

**Re: Application to Appropriate Water No. 30166,
El Sur Ranch
Protestant: The Motzel Trust**

Dear State Water Resources Control Board:

I hereby submit this Policy Statement regarding the position of The Motzel Trust with respect to State Water Resources Control Board ("SWRCB") Application to Appropriate No. 30166, El Sur Ranch.

By education and trade I am a landscape engineer. In addition, I am an ecologist and a gardener. I have worked in my profession over 20 years in both Europe and the United States and I have developed a keen eye for, and understanding of, the Big Sur environment.

Since I moved to Big Sur in 1998, I have detected changes in the Big Sur valley that are not encouraging. There is less water in the river, the trees are dying due to several causes and invasive species are threatening our unique ecosystem. Moreover, native species such as the Central Coast Steelhead trout, the red legged frog and the Southwestern pond turtle, each of which is listed as threatened or endangered, are having a hard time surviving in this environment. Finally, it is my understanding, from a review of the protests filed against the El Sur Ranch application, that there may also be a saltwater intrusion problem as the result of the high volume of pumping on the El Sur Ranch.

I am mentioning this to make clear that the Big Sur Valley is not in good shape anymore. At issue with this Application to Appropriate Water are enormous amounts of water to be used for alleged ranching purposes. The opinion of the EIR, supplied by the Applicant, suggests little or no impact from the pumping of large quantities of water by the El Sur Ranch to either the Big Sur River or the Big Sur River delta.

Based on my education and experience, I am of the professional opinion that any kind of damage should be prevented before it occurs, even if it is

small, as damage to the environment cannot always be reversed or corrected after it has occurred. We can try to help nature to find its way back to an equilibrium, but to fully repair harm to the environment is almost always impossible. That the EIR states there will be little or no damage is not comforting, we need to prevent any damage to this unique part of nature.

Based upon my review of the applicable data, there is no reliable data about how much water really flows in this river. As all parties are aware, The California Department of Fish and Game is currently seeking to find out how much water is necessary to sustain the existing fish populations in the Big Sur River. The Department of Fish and Game began a Big Sur River instream flow study site selection and transect location on September 15, 2010. This study will examine both the Molera and Campground Reaches of the Big Sur River, areas in which the El Sur Ranch well heads and surrounding habitat are located. Attached hereto as Exhibit "A" is a true and correct copy of a June 2, 2010, letter from the Department of Fish and Game, noticing the above referred to study.

It is therefore clear that the Department of Fish and Game has not finally quantified nor characterized south-central steelhead habitat as a function of flow in the Big Sur River using either modeling, hydrologic, or empirical methods. Such a development of habitat and flow relationships will also allow the Department of Fish and Game to identify the exact requirements needed to protect south-central steelhead in the Big Sur River. Accordingly, any stream-flow requirements in the El Sur Ranch EIR do not adequately address the necessary measures to protect the "critical habitat" for threatened steelhead species, as required by both the California Department of Fish and Game and the U.S. National Marine Fisheries Act.

Therefore, the State Water Resources Control Board should not issue a permit on Application 30166 until such time as the California Department of Fish and Game has completed and analyzed its recent survey of the Big Sur River. Applicant filed its application on July 7, 1992, nineteen years ago to the day. The SWRCB should issue a permit on Application 30166 only after the Department of Fish and Game completes its current Big Sur River Study and the Study's findings can be incorporated into the Decision issuing a permit on Application 30166 and its terms and conditions. Such delay will prejudice no one.

Unfortunately, to my knowledge, there is only one Big Sur river flow gauge that provides accurate information about the quantity of water flowing down the river. There is no way, at this point in time, to truly find out how much water is being drawn out of the river and its undercurrent. State Parks, private wells, businesses/ commercial wells, and Sycamore canyon residents are diverting water from the Big Sur River and rely on it for their

existence.

On a regular basis I check our well site and I have observed that the water in the Big Sur River has diminished in quantity since 1989. So my question is: How can there be water for us to waste on flooding fields? The El Sur Ranch does not need this quantity of water as there are other ways of irrigation that have the same effect but use far less water.

It is offensive to me that I would have to travel through a Golf-course like scenario to get to my property. If I had wished for something like this, we would have moved to the Monterey Peninsula. Driving along barb-wire fences to Big Sur is not what I had imagined and makes me feel a bit like in the Cold War times. I grew up next to the Iron Curtain and was glad when it fell.

The Question that crosses my mind is, what is the Hill Ranch doing for the people who rely on the Big Sur River in exchange? The people of California own this water and why should it be given away if doing so will result in possible damage to the Big Sur Valley?

This seems very odd to me to give water away to a company that has been accused of illegally diverting water for years. According to California Sportfishing Protection Alliance director Bill Jennings, in 1990, the El Sur Ranch was caught illegally diverting from the Big Sur River. Moreover, it is also my understanding that the Center for Biological Diversity, Friends of the River, Los Padres Forest Watch, the Sierra Club's Ventana chapter, the Ventana Alliance and the Sport Fishing Protection Alliance have asserted that the El Sur Ranch "[H]as used the water rights application process to delay remedial action and avoid culpability." What is strangest to me is that data is being used to justify an Appropriative Permit, but the quantity applied for is based on illegal diversions, according to the above authorities.

Also how can it be that the El Sur Ranch is diverting water from one watershed and using it in another? Apparently the El Sur Ranch is approximately 7000 acres and about 267 acres are irrigated with water from the Big Sur River, but only about 25 of those acres are within the Big Sur watershed. The Applicant must develop and confine its water pumping and usage to its own watershed and not the Big Sur River watershed. Accordingly, Applicant is in violation of the applicable provisions of the Big Sur River protected waterway management plan, as adopted by the Monterey County Board of Supervisors in 1985, as well as the Big Sur Land Use Plan and the regulations for development in the Big Sur Coast Land Use Plan, both of which prohibit new water systems or expansion of existing water systems that transport water out of the watershed of any perennial stream.

Is pasture irrigation and raising of cattle the only motive to apply for this permit? It seems imaginable that there might be other undisclosed motives to do so.

The SWRCB has, to my knowledge, not recently enforced stipulations in their permits. The recently approved Application to Appropriate number 30946, in favor of the Clear Ridge Mutual Water Association was for the service of 42 parcels of property for domestic use. Despite being made aware of it, the SWRCB has done nothing to prevent the intensification of commercial agricultural uses under the permit. Again, the SWRCB has been informed about this, but nothing has happened.

Will the same happen when the El Sur Ranch has his permit? We have no way of knowing. In fact, with respect to the Applicant's current violations, Dave Clegern, a public affairs employee of the State Water Resources Control Board has said with respect to the Applicant: "Technically, what they are doing is illegal." "We [the State Water Resources Control Board] have chosen not to enforce our authority." Attached hereto as Exhibit "B" is a true and correct copy of a Carmel Pine Cone article dated January 7-13, 2011, in which Mr. Clegern is quoted. If the State Water Resources Control Board is not admittedly itself going to enforce its own rules and regulations, why should anyone go through the permit process when what they ultimately obtain is meaningless for all concerned?

I am aware that the State of California is going through budget cuts that make it very difficult for the SWRCB to truly assess the situation in Big Sur. So therefore I suggest a halt on the issuance of any kind of permit to the El Sur Ranch until we can be sure that the data on which it is based is factual and there will be truly no impact on the environment in the Big Sur river delta. If this permit is granted, who else is going to ask for water out of this source?

The possible scenario developing here looks to me very much like the Carmel Valley. The Carmel River used to support fish and other wildlife. Now it is a sand ditch during summer and is not what it should or could be, a flowing river all year long. We have to protect the Big Sur River so the people and environment in Big Sur will thrive. Stressing the Big Sur River seems more to me like sawing at a branch on which one is sitting.

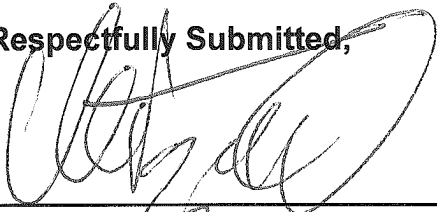
On a very personal note, I lived next to the Rhine River for over 35 years and it took the German government the same amount of time to clean up the river so it could support wildlife again. We do not have the time or the resources to gamble with nature in this situation, especially if only one private party, the El Sur Ranch, is going to benefit.

I have tried to make sense of all what I read about this permit process and I am under the impression that all kind of smokescreens were used to justify or discredit this permit process. How can it be that an average person can make no sense of what he was forced to ingest by reading most of the submitted opinions and so called facts?

The needs of the many, the people animals and environment of Big Sur, outweigh the need of the individual. We need the Big Sur valley in the best possible condition and simply cannot afford to take any risks with its integrity by diverting huge amounts of water that will, ultimately, be harmful to the environment and to all those who live in it.

Thank you for your attention.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'Werner Motzel', written over a horizontal line.

**Werner Motzel, Trustee
The Motzel Trust U/A dtd
12/17/92, as amended**



June 2, 2010

Subject: California Department of Fish and Game Big Sur River Instream Flow Assessment Activities

Dear Interested Stakeholder:

The Department of Fish and Game (Department) has interest in assuring that water flows within streams are maintained at levels which are adequate for long-term protection, maintenance and proper stewardship of fish and wildlife resources. This letter is to inform you and invite your participation in the instream flow study activities that are planned to take place on the Big Sur River by the Department and contractors. The Department anticipates field work (transect selection) commencing in the summer of 2010 and would like to invite your participation as part of an Instream Flow Incremental Methodology (IFIM) approach for instream flow assessment.

The Big Sur River has been identified as one of the Department's priority streams in 2008 for future instream flow assessments pursuant to the Public Resource Code (PRC) sections 10000-10005. The PRC mandates the Department to develop stream flow requirements for the long-term protection, maintenance and proper stewardship of fish and wildlife resources. Pursuant to the PRC, the Department needs to conduct field studies to identify stream flow requirements for the protection of South-Central California Coast Steelhead in the Big Sur River.

The overall goal of the current investigation is to quantify or characterize south-central steelhead habitat as a function of flow in the Big Sur River using modeling, hydrologic, and empirical methods. Development of habitat and flow relationships will allow the Department to identify flow requirements needed to protect south-central steelhead in the Big Sur River. Using data generated from the flow study, the Department intends to develop stream flow recommendations for the Big Sur River and to transmit those stream flow recommendations to the State Water Resources Control Board (Water Board) for consideration as set forth in 1257.5 of the Water Code.

If you are interested in participating in upcoming field activities, receiving future updates or notices related to project activities, or have any questions please contact Robert Holmes by email at rholmes@dfg.ca.gov.

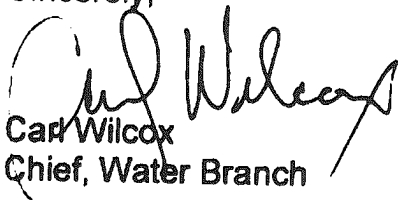
Conserving California's Wildlife Since 1870

The Big Sur River Study Plan – *Habitat and Instream Flow Relationships for Steelhead in the Big Sur River, Monterey County* can viewed at:
<http://www.nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=19997>

The Department of Fish and Game Priority Streams List can be viewed at:
http://www.dfg.ca.gov/water/instream_flow_docs.html

The Public Resource Code sections 10000-10005 can be viewed at:
http://www.dfg.ca.gov/water/docs/PRC_Section_10000-10005.pdf

Sincerely,


Carl Wilcox
Chief, Water Branch

cc: Neil Manji, Branch Chief
Chuck Armor, Regional Manager
Jeffrey Single, Regional Manager
George Heise, Program Lead

The Carmel Pine Cone

Volume 97 No. 1

On the Internet: www.carmelpinecone.com

January 7-13, 2011

Big Sur River becomes latest steelhead battleground

By CHRIS COUNTS

IS EL Sur Ranch harming the Big Sur River by pumping too much water from two wells at Andrew Molera State Park?

That's what two state agencies and a fishermen's group claim as they oppose a permit for the ranch to continue pumping from the wells, which its owners have done since 1949.

The State Water Resources Control Board will conduct a hearing March 8 to consider an application by the ranch to pump an average of 1,200 acre-feet per year from the river over a 20-year period.

The California Department of Parks and Recreation, the California Department of Fish and Game, and the California Sportfishing Protection Alliance filed protests against the proposal, insisting that the pumping is reducing flows in the

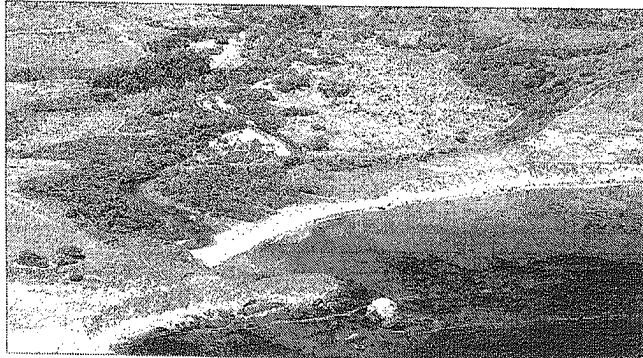


PHOTO: CALIFORNIA COASTAL RECONSTRUCTION PROJECT

El Sur Ranch irrigates more than 200 acres of its pastures with water pumped from two wells alongside the Big Sur River as it flows to the ocean through Andrew Molera State Park (above). A hearing in March will determine if the ranch can continue to use the water.

Big Sur River, creating salt water intrusion and jeopardizing the survival of Central Coast steelhead trout, the California

See RIVER page 11A

Water district asks public to save its \$\$\$

By KELLY NIX

FACED WITH the possibility its budget could be slashed by almost half -- a blow that would force sweeping reductions in programs and layoffs of about one-third of its workers -- the Monterey Peninsula Water Management District is appealing to its constituents for help.

On Dec. 21, 2010, a judge with the California Public Utilities Commission rejected an application by California American Water to recover an 8.375 percent user fee it had tacked onto customers' water bills. The fee -- which Cal Am

See DISTRICT page 12A

DRA challenges desal approval

By CELLY LIX

THE STATE agency that led the charge for a regional water project for the Monterey Peninsula is challenging a decision by another agency that would allow it to go forward.

The Department of Ratepayer Advocates on Monday filed a motion with the Public Utilities Commission compelling the PUC to reconsider a decision it made last month approving a plan that would offer a drought-free water supply for the Peninsula.

PUC commissioners voted Dec. 2, 2010, to issue California American Water a permit for the estimated \$300-

See DESAL page 8A

Council surprised to find raise in firefighters' contract

By MARY BROWNFIELD

AFTER DISCOVERING a provision that would give the city's firefighters an 8.75 percent raise retroactive to the beginning of last year, the Carmel City Council decided Tuesday not to vote on changes to the firefighters' contract, which expired at the end of the 2010.

Council members were also concerned that changes to the contract favored a fire merger with Monterey, instead of leaving the door open to other options.

The proposal -- presented to the council by city administrator Rich Guillen after negotiations with the firefighters' union -- was to extend the contract while council members debate options for running Carmel Fire Department, including a takeover by the City of Monterey or contracting with a state agency, Cal Fire. But the retroactive raise, which would be triggered if the city didn't approve a merger by March 31, drew criticism from council members.

"It looks like a contract extension, and then when you get into it, it looks more like a renegotiation," observed councilman Ken Talmage, who removed the item from the consent agenda at the Jan. 4 meeting in order to raise his concerns.

According to their old contract, firefighters were due an

8.75 percent raise as of Jan. 1, but the amended contract presented to the council included a provision that would grant the raise a year earlier, "if no merger of fire-related services, or Joint Powers Authority for fire-related services, or any

See CONTRACT page 5A

BIG SUR DRIVER WHO FLED ARRESTED IN RENO

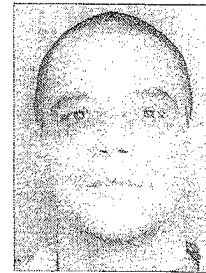
By MARY BROWNFIELD

MARK HUDSON -- the 50-year-old Big Sur man accused of drunken driving in the accident that killed 17-year-old Rachel Love Wiesjahn in August 2008 -- was booked into Monterey County Jail Wednesday morning after being transported from Reno, Nev., where police discovered there was an outstanding warrant for his arrest.

When police contacted Hudson in Reno,

reportedly for his involvement in a traffic collision, officers discovered Monterey County Superior Court Judge Terrance Duncan had issued a bench warrant for him last month after he failed to show up in court for a hearing. Duncan had ordered Hudson to court because he allegedly violated the terms of his \$300,000 bail by driving drunk on Oct. 13, 2010, in a city near Sacramento, but his attorney, Larry Biegel, showed up without him.

"There are a lot of unanswered questions here," said Monterey County deputy district attorney Doug



Mark Hudson

See DUI page 21A

Miller takes office as new county sheriff

By MARY BROWNFIELD

HE TOOK the oath of office last Thursday and became Monterey County Sheriff at 12:01 a.m. New Year's Eve.

But Scott Miller was also ceremonially sworn in Monday in the board of supervisors chambers in front of a standing-room-only crowd of friends, family, supporters, sheriff's office employees and representatives from numerous other law-enforcement agencies throughout the county.

After joking a bit and describing the challenges of running a countywide campaign out of his home, Miller said he told the audience the election is past, and "now it's time to focus on providing the best law enforcement services to Monterey County, which is a big goal -- a multifaceted goal."

Miller said he'd been working 12-hour days with people at the sheriff's office since early December. He prepared for the transition by getting to know his new employees, reacquainting himself with those he knew from his long law-enforcement career in Salinas and Pacific Grove, and learning the ropes of the large agency, so he would be ready to take over when out-

See SHERIFF page 8A



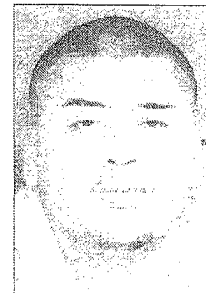
HALO/OPAL/THASH

Jane Miller pins the Monterey County Sheriff's badge on her husband, Scott Miller, at his swearing-in Monday.

Suspect in Mucky Duck shooting eludes police

By MARY BROWNFIELD

A MAN was found dead, a house caught fire and no arrests were made Wednesday during a coordinated raid on two Greenfield homes in connection with the New Year's shooting in front of a Monterey bar that sent three men to the hospital. The prime suspect, 23-year-old Greenfield resident Alejandro Gonzalez, is wanted on three counts of attempted murder and is still at large.



Alejandro Gonzalez

See SUSPECT page 9A

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EXHIBIT "B"

RIVER

From page 1A

red-legged frog and the Southwestern pond turtle, each of which is listed as threatened or endangered. State parks also claims the ranch is pumping more water than it needs to irrigate its pastures, resulting in runoff and erosion.

The landmark 7,000-acre ranch, much of which forms a scenic corridor along Highway 1, is owned by Jim Hill. The ranch irrigates about 267 acres with water from the river, although only about 25 of those acres lie within the Big Sur River watershed.

Two decades of contention

The controversy started in 1990, when state parks filed a complaint against El Sur Ranch alleging it was taking water from the river's underground flow, and not from a separate aquifer. In 1992, the SWRCB agreed, and required El Sur Ranch to get a permit to use the wells. The agency also "allowed" the ranch to continue using the wells while the permit was being processed.

But 19 years later, the issue remains unresolved. According to attorneys from the ranch, studies were launched, hearings were conducted, applications were revised and an environmental impact report was rejected. Attorney Mark Blum insisted the ranch has tried to resolve the dispute in a timely manner. "We have been cooperating in good faith," Blum said.

The ranch released a new EIR in October 2009. According to the document, strict limits on pumping would be enacted during the driest months of the year, when the ranch would divert a maximum of 735 acre-feet from July 1 through Oct. 31 and pump no more than 230 acre-feet during a single month.

In response, a consortium of environmental groups — including the Center for Biological Diversity, Friends of the River, Los Padres Forest Watch, the Sierra Club's Ventana chapter, the Ventana Wilderness Alliance and the sportfishing alliance — accused the ranch of simply delaying the inevitable judgment against it. "It is clear that El Sur Ranch has used the water rights application process to delay remedial action and avoid culpability," a joint statement by the groups reads.

Is the ranch breaking the law?

In addition to their claim that El Sur Ranch has delayed the resolution of the case, some of the groups insist its existing pumping is illegal, regardless of what the SWRCB told the ranch in 1992.

"In 1990, El Sur Ranch was caught illegally diverting from the river," reads a quote from California Sportfishing Protection Alliance executive director Bill Jennings that was used last week in a press release. "Finally, after almost two decades of illegal diversions ..." begins another comment.

Blum, though, said the ranch has "has not been cited for any illegal activity" pertaining to its pumping from the river. He also insisted the ranch has permission from the SWRCB to pump water from the river while its application is being processed, although the state agency has placed a limit on how much water the ranch can pump.

"The board requested and obtained the ranch's agreement not to divert more than 3.5 acre-feet annually per acre pending a hearing on the application," Blum explained.

A spokesman for the SWRCB, however, said there is no formal agreement between the agency and El Sur Ranch.

"Technically, what they are doing is illegal," explained Dave Clegern, who works in the agency's public affairs office. "We have chosen not to enforce our authority."

Not enough fish?

Environmentalists insist that not only is the pumping illegal, it is diminishing the number of steelhead in the river.

But Blum points out the National Marine Fisheries Service has the following statement regarding "South-Central California Coast" steelhead posted on its website: "All of the four largest watersheds (Pajaro, Salinas, Nacimiento/Arroyo Seco and Carmel rivers) have experienced declines in run sizes of 90 percent or more. Only a few populations along the Big Sur Coast have retained near historic numbers."

While the CDFG isn't specifically counting the number of steelhead in the river, the agency is seeking to find out how much water is necessary to sustain its existing population of the fish. The agency launched a lengthy study this past summer. Since the study is not expected to be completed until at least 2012, it's unlikely to be much help at the March hearing. When asked this week if the agency can say how much water is needed in the river for the steelhead, Robert Holmes, an instream flow program coordinator for the CDFG, conceded he didn't know. "That's why we're doing the study," Holmes said.

Despite the lack of evidence, longtime steelhead activist and Big Sur resident Jack Ellwanger said he believes the pumping by the ranch is significantly reducing the amount of water in the river. "The lagoon is getting graveled up," Ellwanger said. "It doesn't have the volume it needs."

Yet Ellwanger has also seen recent signs that steelhead are still thriving in the river — despite the impacts of development and periodic natural disasters like fires and flooding. "I was down at Molera the other day, and I saw a lot of juveniles leaping the air," he added. "It was great to see."

Who gets their water first?

When the SWRCB meets in March, they will also consider whether another water application deserves a higher priority. In 1998, the Division of Water Rights determined that a well owned by the Clear Ridge Mutual Water Company, which serves 42 properties on nearby Clear Ridge, was pumping water from the underground flow of the river. In response, the water company filed an application the following year with the SWRCB, which approved the request last month. The permit allows the water company to pump up to 42 acre-feet annually. The well is located upstream from El Sur Ranch.

In September, the water company asked the SWRCB's Division of Water Rights to grant its application priority over the ranch's application because they say California water law states that domestic uses of water are more beneficial to the public than agricultural uses. Since the Clear Ridge Mutual Water Company already had its application approved, it's unclear how it would be affected if the SWRCB approves the El Sur Ranch permit and denies the water company's request to make its pumping a higher priority.

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