
State Water Resources Control Board

NOTICE OF STATUS CONFERENCE

The State Water Resources Control Board
Administrative Hearings Office
will hold a Status Conference on
pending Application 30166 filed by

EI Sur Ranch

for a permit to appropriate water from
the Big Sur River in Monterey County.

**The Status Conference will begin on
June 30, 2022, at 9:00 am**

and will be held by Zoom teleconference.

You may participate in the Zoom teleconference by using the link:
<https://waterboards.zoom.us/j/97010449186?pwd=eG1OTUtrcTM0TDdkdXh3dC8xdFRMUT09>

with Meeting ID: 970 1044 9186 and Passcode: 298140
or by calling in at: +16699009128,,97010449186#,,,,*298140# US (San Jose)

Interested members of the public who would like to watch this status conference without participating may do so through the Administrative Hearings Office YouTube channel, accessible by clicking on “Watch AHO Hearings” at:
https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/

BACKGROUND

On July 27, 1992, James J. Hill III (Applicant) filed water-right Application 30166 on behalf of El Sur Ranch with the State Water Resources Control Board's (State Water Board or Board) Division of Water Rights (Division) for a permit to appropriate 1800 acre-feet per year (af/yr) of water from the Big Sur River, at a rate of diversion of up to 5.84 cubic feet per second (cfs), year-round, to irrigate 292 acres of pasture located along the Pacific Coast in Monterey County.

El Sur Ranch pumps water to irrigate pastureland from two wells located in Andrew Molera State Park, adjacent to the Big Sur River. One of the wells has been in operation since 1949 and the other has been in operation since 1984. In 1992, the Division issued a report in which Division staff concluded that extractions of water from the wells are diversions from the Big Sur River. The report concluded that these diversions required a water-right permit under Division 2 of the Water Code with the exception of diversions from the wells used to irrigate approximately 90 acres of ranch land that the report concluded was riparian to the Big Sur River. Mr. Hill filed Application 30166 soon after the Division issued its report. California Sportfishing Protection Alliance (CSPA), California Department of Fish and Game (CDFW), and California Department of Parks and Recreation protested the application based on the impact of the diversions on flows in the Big Sur River and habitat for South Central California steelhead and other protected species.

The Applicant amended Application 30166 in November and December 2005, October 2006, and June 2011. The current application is for a water-right permit that would authorize diversion of water at a rate not to exceed 5.84 cfs, with an annual maximum of 1,320 acre-feet, a maximum 20-year rolling average of 1,087 acre-feet per year, a seasonal limit of 676 acre-feet from July 1 through October 31, and a monthly limit for July, August, September, and October of 203 acre-feet per month.

The State Water Board held a public hearing on Application 30166 in June and July 2011.

On September 23, 2016, CDFW transmitted proposed streamflow requirements for the Big Sur River to the State Water Board, with a supporting flow recommendation report, pursuant to Public Resources Code section 10001 and 10002.

On April 15, 2019, El Sur Ranch and CDFW submitted a draft settlement agreement (Settlement Agreement) to the State Water Board that addresses most elements of CDFW's protest to the application. The Settlement Agreement would allow the Applicant to obtain a water right permit that authorizes diversion of up to 1,320 acre-feet per year (with a maximum of 1,087 acre-feet per year on a 20-year rolling average), with conditions on El Sur Ranch's operation of the wells, including minimum bypass requirements measured at a United States Geological Survey (USGS) gage on the Big Sur River. The Settlement Agreement provides that El Sur Ranch will construct an off-stream reservoir to store water for use when the bypass requirements limit pumping.

Implementation of the Settlement Agreement would require the Applicant to amend its application to include off-stream storage and to revise the proposed place of use to reflect the construction of a pond and replacement pasture for the pond area.

On April 30, 2019, the Board-Member hearing officer held a hearing management conference in the El Sur Ranch proceeding. Representatives for the Applicant, CDFW, CSPA, and the Carmel River Steelhead Association participated in the conference. During the conference, the hearing officer and the participants discussed the Settlement Agreement and a schedule for the applicant to complete actions necessary for the Board to act on an amended application consistent with the Settlement Agreement.

On April 15, 2020, the Board-Member hearing officer issued a ruling letter directing the Applicant: (1) to submit a proposed schedule for the Applicant to revise the application to reflect the Applicant's current intended project, for the Applicant to complete required environmental documentation, and for the Board to conduct a supplemental hearing; and (2) to submit an interim plan for diversions from the Applicant's wells while its water-right application is pending to protect, to the extent feasible, public trust resources in the Big Sur River. The ruling letter also presented the hearing officer's opinion, which was not a final determination or final action by the Board, that Water Code section 1004 applies to the irrigation of pasture as proposed in Application 30166 and would limit the amount of water that the Board could authorize for appropriation in any water-right permit issued on Application 30166.

In a letter to the Board dated June 16, 2020, the Applicant proposed a 30-month schedule to submit an amended application, to assist in the preparation of supplemental environmental documentation under CEQA, and for the State Water Board to conduct additional days of public hearing necessary for the Board to act on the application. The Applicant proposed to continue its diversions in accordance with the interim plan for diversions in the Settlement Agreement until the Board issues a decision on the application. The Settlement Agreement includes the following interim plan for diversions from El Sur Ranch's wells:

Until the bypass effective date, ESR may operate pumps and divert until the river flow drops to 10 cfs at which point diversions shall cease. There should be no diversions commencing on Friday night at 5 p.m. until Monday at 5 p.m. on Memorial Day and Labor Day weekends and from July 3 at 5 p.m. until July 5 at 5 a.m.

(2020-06-16 Letter from ESR.)

Center for Biological Diversity and CDFW submitted comments on the Applicant's proposed schedule and interim plan for diversions. On December 9, 2020, the hearing officer directed the parties to reach an agreement within 90 days (by March 9, 2021) on an interim plan for diversions from El Sur Ranch's wells while the water-right application is pending. On March 9, 2021, the Applicant requested a time-extension to continue negotiations. The hearing officer extended the deadline for the parties to reach an agreement on an interim plan for diversions to April 9, 2021. On April 9, 2021, El Sur

Ranch sent a letter to the State Water Board stating that the parties had “made substantial progress but have not reached a final agreement.” (2021-04-09 ESR Status Report.)

ASSIGNMENT TO THE ADMINISTRATIVE HEARINGS OFFICE

Water Code section 1112, subdivision (c)(2), provides that the Board may assign an adjudicative hearing to the AHO. Water Code section 1114 provides that, after the AHO holds a hearing in an assigned matter, the AHO hearing officer shall prepare a proposed order and transmit it to the Board for the Board’s consideration.

On December 9, 2021, Erik Ekdahl, Deputy Director for the Division, recommended to the Board’s Executive Director, Eileen Sobeck, that she assign Application 30166 to the AHO for further proceedings. On December 9, 2021, Ms. Sobeck issued a memo to the AHO assigning Application 30166 to the AHO.

HEARING OFFICER AND HEARING TEAM

AHO Hearing Officer Nicole Kuenzi will preside over any hearing in this matter. Other members of the AHO may be present and assist the hearing officer throughout these proceedings. The hearing officer and other AHO staff members may consult with staff of the Board’s Division of Water Rights (except staff in the Enforcement Section), attorneys in the Board’s Office of Chief Counsel, members of the executive management of the State Water Board, and State Water Board members, to discuss or deliberate on matters relevant to this proceeding.

STATUS CONFERENCE

The AHO hearing officer will hold a status conference on the date and at the time specified on the first page of this notice by Zoom teleconference. No in-person appearances will be allowed. The status conference will be held and electronically recorded by Zoom teleconference. The hearing officer will prepare a status conference order after the conference. The AHO will not retain a court reporter for the status conference. Any party may arrange for a court reporter at the party’s own expense.

During the status conference, the AHO hearing officer will discuss the following issues with the parties’ representatives:

- (1) Does El Sur Ranch plan to amend Application 30166? If so, when will El Sur Ranch submit an amended application to the Division? What is the status of El Sur Ranch’s work on environmental documentation under CEQA to support an amended application?

- (2) When should the AHO hold a supplemental hearing to receive evidence relevant to any amendments to Application 30166 and to consider CDFW's proposed streamflow requirements for the Big Sur River?
- (3) What is the status of negotiations on an interim plan for diversions from El Sur Ranch's wells while Application 30166 is pending?
- (4) Are there any other procedural issues that any the participants would like to discuss? If so, what are these issues?

NOTICES OF INTENT TO APPEAR; UPDATED SERVICE LIST

Any person or entity that wants to participate in this status conference must file a Notice of Intent to Appear (NOI), using the form attached to this notice, with the AHO before the deadline listed below.

If the AHO does not receive an NOI from El Sur Ranch before the deadline specified below, then the AHO may transmit a proposed order to the Board that would cancel Application 30166 without conducting a hearing.

After the status conference, the AHO will issue a status conference order and an updated service list, which the AHO will use for future notices in this proceeding. The AHO will include in this updated service list only the people and entities that have filed an NOI or otherwise have advised the AHO that they want to be on the service list for this proceeding. If you want to continue to receive AHO notices regarding this proceeding, then you must advise the AHO in writing, using one of the methods listed below, that you want to continue to receive AHO notices regarding this proceeding. You do not need to send copies of your request to the other parties.

The AHO encourages parties to agree to accept electronic service (by e-mail) of all documents regarding this proceeding. If a party is not willing to do this, then the party may check the appropriate box on the NOI form. If this box is not checked, then the AHO will assume that the party agrees to accept electronic service. Parties that do not agree to accept electronic service will experience delays in receiving documents by U.S. Mail from the AHO and other parties.

STATUS CONFERENCE STATEMENTS

Parties do not need to file status conference statements. If any party wants to file a status conference statement, the party shall file the status conference statement with the AHO and serve copies of it on the other parties listed in the attached service list by the deadline listed below. The AHO will post the statements on the Water Board AHO-FTP site in the folder for this matter.

NOI and Status Conference Deadlines and Schedule

Deadline for filing NOIs and optional status conference statements, with proofs of service.	June 23, 2022, 12:00 pm
Status conference date and time.	June 30, 2022, 9:00 am

SUBMITTAL OF DOCUMENTS TO AHO AND OTHER PARTIES

All documents submitted to the AHO, including NOIs and status conference statements, shall be addressed and submitted by one of the following methods (with proofs of service, as discussed above):

By Email (preferred method)	AdminHrgOffice@waterboards.ca.gov with subject line "El Sur Ranch"
By Mail:	State Water Resources Control Board Administrative Hearings Office P. O. Box 100 Sacramento, CA 95812-0100
By Hand Delivery (see instructions below):	Joe Serna Jr. CalEPA Building Administrative Hearings Office c/o Water Rights Records Unit 1001 I Street, 2nd Floor, Room 114 Sacramento, CA 95814

Service of documents by hand-delivery may be more difficult or delayed due to building or office closures during the COVID-19 pandemic. Please plan ahead if you wish to hand deliver documents. Any hand-delivered submittals must be date-and-time stamped by the Division of Water Rights Records Unit personnel before the submittal deadline. Persons delivering submittals to the Records Unit must first check in with CalEPA Building lobby security personnel on the first floor of the CalEPA Building and obtain authorization to go to the Water Rights Records Unit on the second floor.

AHO WEBPAGE AND NOTICES

Subject to legal limitations, including the requirements for internet website accessibility in Government Code section 11546.7, the AHO will post all of its notices and other AHO documents regarding these proceedings on the AHO's internet webpage at https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/ Any interested person or entity may sign up to receive all AHO notices at https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html

STATUS CONFERENCE LIVE-STREAM AND RECORDING

The status conference will be live streamed through the Administrative Hearings Office YouTube channel, accessible by clicking on the link provided below. After the conclusion of the conference, a recording of the YouTube live-stream of the conference will be available on the Administrative Hearings Office YouTube channel. These recordings will include automatic captions for accessibility.

The live stream and recordings may be accessed at the following link:

<https://www.youtube.com/channel/UCM-gmipRyd7Nw-g8l-C7Nig/videos?view=57m>

ADMINISTRATIVE RECORD

The AHO has copied documents from the public records the State Water Board's Division of Water Rights has maintained that may be relevant to this proceeding. The AHO has included these documents in the initial administrative record for this proceeding. The AHO has posted files of these documents on the FTP site in the folder for this hearing. Instructions on how to access the FTP site are on the AHO's webpage at:

https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2021/2021-07-09_ftp_sites.pdf.

Some of these documents are also available on the State Water Board's Hearings Program webpage at:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/elsur_ranch/

PROHIBITION ON *EX PARTE* COMMUNICATIONS

As discussed in the AHO's February 4, 2022 Notice of Assignment, all parties are prohibited from having any *ex parte* communications with any members of the AHO hearing team. (See Wat. Code, §§ 1110, subd. (c), 1113; Gov. Code, §§ 11430.10-11430.80.) The AHO has posted a discussion of *ex parte* communications on the AHO's webpage at:

https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2021/2021-07-06_webpage_faq.pdf. (See response to FAQ 16.)

If any party or interested person wants to communicate with any member of the hearing team, or any Board member, at any time while this proceeding is pending regarding any procedural or substantive issue related to this proceeding, then that party or interested person shall make such communication in writing (by e-mail or letter) and serve all parties listed on the service list for this proceeding with copies of the communication and include a proof of service demonstrating such service of the written communication to the AHO. Until the AHO issues an updated service list, parties should use the service list attached to this notice. A party may provide this

proof of service through a formal proof of service or by other verification. For e-mails, the verification shall be a list of the e-mail addresses of the parties or their representatives in an electronic mail "cc" (carbon copy) list. For letters, the verification shall be a list of the names and mailing addresses of the other parties or their representatives in the cc portion of the letter.

Any such communication shall be sent to the AHO by e-mail to: AdminHrgOffice@waterboards.ca.gov, or by letter addressed to:

State Water Resources Control Board
Administrative Hearings Office
P.O. Box 100
Sacramento, CA 95814-0100

If the AHO receives any communication regarding this proceeding that is addressed to the AHO, a Board member, or any other member of the hearing team, then the AHO will file a copy of the communication in the appropriate folder within the AHO-FTP folder for this proceeding.

Please do not attempt to communicate by telephone or in person with any AHO hearing team member regarding any procedural or substantive issue concerning this proceeding, because other parties would not be able to participate in such communications. If oral communications with any members of the AHO hearing team are necessary to discuss any procedural or substantive issue, then the AHO will set up a conference call in which representatives of all parties may participate. Any party may request such a conference call at any time using the written communications protocols described above.

May 23, 2022

SIGNATURE ON FILE
Nicole Kuenzi, Hearing Officer

Enclosures:

- Notice of Intent to Appear Form
- Service List

NOTICE OF INTENT TO APPEAR FORM

_____ (name of participant) plans to participate in the status conference regarding Application 30166 filed by El Sur Ranch

which is scheduled to begin on June 30, 2022, at 9:00 am.

Name (type or print):

Represented party (if applicable):

Mailing Address:

Telephone Number: _____

E-mail Address: _____

Optional:

I/we decline electronic service of hearing-related materials.

Signature: _____

Date: _____

SERVICE LIST

Updated February 3, 2022

By e-mail only

Participants:

EL SUR RANCH
Mr. Tom Berliner
Duane Morris LLP
One Market Plaza, Suite 2200
San Francisco, CA 94105
tberliner@duanemorris.com

CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE
Mr. Chris Shutes
1608 Francisco St.
Berkeley, CA 94703
blancapaloma@msn.com

TROUT UNLIMITED
Mr. Brian Johnson
2239 5th Street
Berkeley, CA 94710
bjohnson@tu.org

CARMEL RIVER STEELHEAD
ASSOCIATION
Mr. Brian LeNeve
P.O. Box 1012
Carmel, CA 93921
bjleneve@att.net

CALIFORNIA DEPARTMENT OF FISH
& WILDLIFE
Mr. Kevin Takei
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
Kevin.Takei@wildlife.ca.gov

CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE/CENTER
FOR BIOLOGICAL DIVERSITY &
VENTANA WILDNERNESS ALLIANCE
Mr. John Buse
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612
jbuse@biologicaldiversity.org

Persons participating by policy statement only:

CALIFORNIA STATE PARKS
Mr. Stephen Bachman
2211 Garden Road
Monterey, CA 93940
stephen.bachman@parks.ca.gov

CALIFORNIA CATTLEMEN'S
ASSOCIATION
Mr. Justin Oldfield
1221 H Street
Sacramento, CA 95814
Justin@calcattlemen.org

VENTANA WILDERNESS ALLIANCE
Mr. Tom Hopkins
P.O. Box 506
Santa Cruz, CA 95061
tom.hopkins@ventanawild.org

CAL FIRE
Mr. Richard Hutchison
2221 Garden Road
Monterey, CA 93940
Rick.hutchison@fire.ca.gov

FRIENDS OF THE RIVER
Mr. Steve Evans
1418 20th Street, Suite 100
Sacramento, CA 95811
sevans@friendsoftheriver.org

MONTEREY COUNTY CATTLEMEN'S
ASSOCIATION
Mr. Aaron Johnson
295 South Main Street, Suite 600
Salinas, CA 93901
Aaron@johnsonmoncrief.com

MONTEREY COASTKEEPER
Mr. Steve Shimek
475 Washington Street, Suite A
Monterey, CA 93940
exec@montereycoastkeeper.org

BIG SUR RIVER INN
Mr. Alan Perlmutter
Highway One at Pheneger Creek
Big Sur, CA 93920
alan@bigsurriverinn.com

NATIONAL MARINE FISHERIES
SERVICE
Mr. David Hines & Mr. Devin Best
David.Hines@noaa.gov
Devin.Best@noaa.gov

DEPARTMENT OF ECOLOGY &
EVOLUTIONARY BIOLOGY,
LONG MARINE LAB
UNIVERSITY OF CALIFORNIA SANTA
CRUZ
Dr. Peter Raimondi
Santa Cruz, CA 95060
raimondi@biology.ucsc.edu

CENTRAL COAST LIGHTHOUSE
KEEPERS
Mr. John O'Neil
P.O. Box 223014
Carmel, CA 93922
johnoneil@montereybay.com

Mr. Butch Kronlund
48280 Highway 1
Big Sur, CA 93920
bpkronlund@aol.com