
State Water Resources Control Board

March 14, 2025

RE: Comments on the Administrative Draft Recirculated Environmental Impact Report for El Sur Ranch Water Right Application 30166

TO ALL PARTIES:

The Administrative Hearings Office (AHO) has reviewed the Administrative Draft of the Recirculated Environmental Impact Report (Administrative Draft) provided on January 24, 2025 and the comments provided by the parties. Attached to this letter (Attachment 1) are AHO comments regarding the Administrative Draft that supplement the AHO comments provided on January 31, 2025. Attachment 1 incorporates comments from the parties that the AHO believes must be addressed in revisions to the Administrative Draft. The Applicant and Montrose Environmental shall also review the remaining comments from the parties not included in Attachment 1 and address those comments as the Applicant deems appropriate. No comments regarding revisions to the baseline have been provided; the AHO will provide direction on this issue and others after the April 1 status conference.

The AHO also recognizes that comments provided by the parties may relate to currently unresolved hearing issues. The State Water Board's obligations under the California Environmental Quality Act (CEQA) are not necessarily the same as its obligations in evaluating a water rights application, and the comments set forth in Attachment 1 should not be interpreted to take any position on the issues to be addressed in a hearing on Application 30166.

/s/Sam Bivins
Senior Hearing Officer
Administrative Hearings Office
State Water Resources Control Board

Attachment 1 – Administrative Draft Comments
Attachment 2 – Service List

Attachment 1 – Administrative Draft Comments

#	Source ¹	Location in Document	Comment
1	DPR	Mitigation Measure 4.3-9j	A pond operations and maintenance plan for protection of California red-legged frogs (CRLF) should require: 1) annual surveys for bullfrogs; 2) the control of bullfrogs and other invasive predators if and when they are found in the pond; and 3) integrated pest management for rodent damage on the levees/dams using methods that are safe for CRLFs and large mammals.
2	DPR	Figure 4.4-2	Renderings of the constructed reservoir with soil-colored embankments should be included. Descriptions of renderings should document how reservoir embankment heights are accurately represented. Additional renderings should be included to show closer views of embankments, such as trails within Andrew Molera State Park and locations near Big Sur River.
3	DPR	R.4.2-31, Impact 4.9-1(iv)	Document should address the level of risk river meandering poses to reservoir embankment stability. The suitability of a setback mitigation measure should be evaluated.

¹ Abbreviations: California Department of Fish and Wildlife (CDFW), California Department of Parks and Recreation (DPR), and Administrative Hearing Office (AHO). Comments incorporated from other parties' submittals have been renumbered and paraphrased.

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4	DPR	R.4.2-45 to 46, Table 4.2-7	The impact analysis should use the project's proposed diversion rate of up to 5.34 cubic feet per second (cfs) on a 30-day running average to evaluate effects of the project, or the project description should describe how the diversion rate will be limited to 3.36 cfs.
5	CDFW	R.4.3-30, R.4.3-38, R.4.3-51.	Pacific lamprey (<i>Entosphenus tridentatus</i>) are present in the Big Sur River and should be added to the table as a species of special concern. The Administrative Draft should also include a description of Pacific lamprey life history and habitat, and potential effects from the diversions.
6	CDFW	R.4.3-30, R.4.3-38, and R.4.3-51	Suitable habitat for Tidewater goby is present in the estuary/lagoon and is located within the species range. However, it is unknown whether the species currently occupies the estuary/lagoon. Tidewater Goby life history and habitat description, and potential effects from the diversion should be included. Potential effects, if any, on Tidewater Goby due to changes in sandbar formation or breaching should be addressed.
7	CDFW	R.4.3-72	Administrative Draft should address how any potential transfer of non-native fish to the Big Sur River will be avoided.
8	AHO	R.2-45	<p>Consider CDFW comment #1 regarding maintenance of flows past the proposed project's point of diversion (POD) in light of the flow recommendations provided by CDFW instream flow recommendations. The AHO acknowledges that this may be a disputed issue among the parties requiring additional hearing days.</p> <p>The Administrative Draft should consider reach losses that occur between USGS gage 11143000 and the points of diversion and the effect of those</p>

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			losses to both the proposed project description and the flow recommendations developed by CDFW.
9	AHO	R.4.3-31	Consider CDFW comment #6. Evaluate and include as appropriate a mitigation measure requiring pre-construction surveys for Foothill yellow-legged frog (FYLF). Describe any other actions or protections that would be needed beyond the protections proposed for CRLF if the pre-construction surveys find occurrences of FYLF.
10	AHO	Various	Consider CDFW comments #14 through #22 and address as appropriate.
11	AHO	R.4.3-51	<p>The Administrative Draft should consider and incorporate CDFW's 2016 study titled <i>Instream Flow Regime Recommendations Big Sur River, Monterey County</i>. Consideration of the 2016 study should also be incorporated into discussion regarding the passage criteria involving a depth of 0.6 feet mentioned in CDFW comment #26 and the thresholds of significance mentioned in CDFW comments #29 and #30.</p> <p>The Administrative Draft should address whether passage depths are necessary thresholds of significance given the availability of interim (DFG-T-22) and finalized (CDFW 2016 Report) stream flow recommendations.</p>
12	AHO	R.2-8	The text lists Swiss Canyon as 19 acres but the map submitted to AHO on February 22, 2024 indicates Swiss Canyon area is 25.5 acres. Please verify area and update accordingly.
13	AHO	R.2-11	The Administrative Draft lists up to 700 head of cattle on the ranch. Does the applicant intend to use project water for stockwatering? If so,

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			consider amending the application to add stockwatering to the proposed purposes of use.
14	AHO	R.2-22	On page R.2-22, the Administrative Draft states that a hydrologic study characterizes the source of water for the wells as a combination of percolating groundwater and water from a subterranean stream. The sentence should be rewritten to be consistent with other parts of the document and characterize the water as from a subterranean stream.
15	AHO	R.2-22	<p>The following sentence needs to be rewritten for clarity. It is unclear what is intended by the term “supportable measure of flow.”</p> <p><i>Additionally, the report authors established a river flow of 5.3 cfs at the upstream United States Geologic Survey (USGS) river gauge as a supportable measure of flow when considering future monitoring and management requirements to maintain river flows.</i></p>
16	AHO	R.2-36	<p>In the Riparian Right subsection, replace the following sentence:</p> <p><i>The applicant filed two Statements of Water Diversion and Use (S14132 and S14133) in October 1993, which were subsequently accepted by the Division of Water Rights on November 10, 1994, in order to document this riparian right.</i></p> <p>With this sentence:</p> <p><i>The applicant filed two Statements of Water Diversion and Use in October 1993, which were subsequently assigned numbers S14132 and S14133 by the Division of Water Rights on November 10, 1994.</i></p>

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17	AHO	R.2-39, Table 2-4	The table and text in the narrative description preceding the table should be updated to reflect that the limitations described in the table were applicable to historical circumstances and that the proposed project (i.e., the reservoir and booster station) will likely affect/improve factors such as border flow rates, irrigation set times, scheduling, and tailwater recovery.
18	AHO	R.2-42	Final sentence in paragraph states 1977 diversions were the basis for the maximum diversion limit, however the proposed limit is 1,320 acre-feet (af), not the 1977 diversion of 1,611 af. Add the basis for the 1,320 af maximum, which was described in Exhibit ESR-12.
19	AHO	R.2-43, Table 2-5	The table and subsequent text need to be updated to reflect removal of Swiss Canyon acreage from irrigation demand calculations.
20	AHO	R.4.1-6 & 7, Table 4.1-1	<p>Table 4.1-1 should include reference to the shift in timing of pumping from dry season to wet season. The table also needs to be updated to reflect removal of Swiss Canyon as part of irrigated acreage. Also, the baseline maximum instantaneous rate implies pumping will be decreased (from >6.0 cfs to 5.84 cfs), but the project description states no proposed change in maximum rate; please update.</p> <p>The description of baseline on page R.4.1-6 should include the baseline information provided in Table 4.2-7 from page R.4.2-47, which better illustrates the changes in seasonal timing of diversions.</p>
21	AHO	R.4.2-4	The second paragraph describes year type definitions, with above normal defined as the 60-80 th percentile and wet as greater than the 90 th percentile. It is unclear how flows between 80 th and 90 th percentiles would be classified. Please update here and throughout document.

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22	AHO	Figures 4.2-4 and 4.2-5	Figures should define the acronym convention for piezometer pairs.
23	AHO	R.4.2-58, 64, 65, 66	It appears there are differing loss factors used for the river loss analysis. R.2-58 provides a loss factor of 0.24 cfs per 1.0 cfs of pumping; page R.4.2-64 provides a range of 0.3 cfs to 0.24 cfs; page R.4.2-65 describes the loss as 16% (which equates to 0.16 cfs per 1.0 cfs) upstream of the ZOI, and page R.4.2-66 describes an "overall loss of flow rate" of 0.16 cfs per 1.0 cfs diverted. Please describe the differences in these values and the basis for the selection of 0.16 cfs per 1.0 cfs of pumping, or update the loss value of 0.16 cfs as appropriate.
24	AHO	R.4.2-66	The description of overall flow loss at the bottom of page R.4.2-66 should include a maximum loss rate based on both pumps operating, in addition to the average loss rate for the period of July through October.
25	AHO	R4.4-19	Under the California Coastal Act paragraph, the project doesn't seem to meet the definition of a "public works" facility under section 30254 as defined by PRC section 30114. While it may be appropriate to highlight the Legislature's intent that "State Highway Route 1 in rural areas of coastal zone remain a scenic two-lane road," it appears that PRC section 30251 is more applicable to the project.
26	AHO	R.4.4-22 to 24	The visual renderings of the reservoir should also include views that show the reservoir empty, or at whatever the minimum operating storage volume will be.

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27	AHO	R.4.17-3 and 4	Multiple dates appear to be listed out of order, possibly with errors in which year contacts or responses occurred. Please review and update accordingly.
28	AHO	R.6-14, R.6-21	Page R.6-14 lists an irrigation efficiency of 73 percent during the baseline period of 1983 to 2002, while page R.6-21 lists an efficiency of 82 percent for the period of 1994 to 2006, and reads as though the 82 percent was what actually occurred during the 1994 to 2006 period. The description on pages R.6-20 to 21 should make clearer whether the 82 percent is a calculated value and if so, provide a brief explanation of how the value was calculated.
29	AHO	R.4.2-67	In the first paragraph on page R.4.2-67, the topic is focused on loss of river flow but the loss values are presented in units of feet instead of cfs. Please describe how river stage loss is related to pumping or correct the typo and present the results in cfs.
30	AHO	R.4.2-76	<p>The first sentence of Mitigation Measure 4.2-4 should be replaced with this statement:</p> <p><i>The Applicant shall prepare an Erosion Control and Operations Management Plan (ECOMP). The Applicant shall provide a copy of the ECOMB to the Deputy Director for the Division of Water Rights (Deputy Director) and the parties to this proceeding and provide an opportunity of at least 45 days for comments on the ECOMB before it is finalized. The Applicant shall review and consider any comments provided by the parties and shall make any revisions requested by the Deputy Director within the timeframe provided by the Deputy Director.</i></p>

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31	AHO	Chapter 6	The Administrative Draft should include an evaluation of a project alternative that includes the proposed bypass flows, construction of the reservoir, and a system to return water from the tailwater pond to the reservoir. This alternative should include an estimate of annual amounts of water that could be recirculated from the tailwater recovery pond to the proposed reservoir via recapture of irrigation water and capture of stormwater runoff from the fields.
32	AHO	R.6-28	Alternative 4 and Alternative 5 appear to be defunct and could be removed from the Administrative Draft. The Administrative Draft states there is no substantial evidence that Alternative 4 would significantly reduce impacts to water quality or fisheries, and that Alternative 5 has been mostly incorporated into the proposed project. Suggest replacing these alternatives with the alternative requested in the AHO's January 31, 2025 letter, an alternative that includes both the proposed project bypass flows and an irrigation limitation of 2.5 acre-feet per acre, and/or the alternative described above in Comment # 31.
33	AHO	Appendix	Please include the Appendix G "Daily Flow Calculation Methodology" from the original Administrative Draft as an appendix to this Administrative Draft.

Attachment 2

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