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Cc: ["jgoldsmith@kmtg.com"](mailto:jgoldsmith@kmtg.com); ["bjohnson@tu.org"](mailto:bjohnson@tu.org); ["jbuse@biologicaldiversity.org"](mailto:jbuse@biologicaldiversity.org); ["bjleneve@att.net"](mailto:bjleneve@att.net); Kuenzi.Nicole@Waterboards; Mitterhofer.Conny@Waterboards; Buckman.Michael@Waterboards
Subject: WATER RIGHT APPLICATION 30166 OF EL SUR RANCH, BIG SUR RIVER IN MONTEREY COUNTY
Date: Thursday, December 20, 2018 4:19:00 PM
Attachments: [esr_110619.pdf](#)

Messrs. Berliner and Takei,

In 2016 and 2017, the State Water Resources Control Board (State Water Board) granted El Sur Ranch (ESR) and the California Department of Fish and Wildlife's (CDFW) requests for abeyance in the proceedings regarding Water Right Application 30166 to allow for settlement negotiations. ESR and CDFW have not provided any recent updates on the status of settlement negotiations.

In the attached letter, the hearing officer directs ESR and CDFW to submit a Hearing Management Plan by **noon, January 31, 2019**.

Questions regarding non-controversial procedural matters should be directed to Jane Farwell-Jensen at jane.farwell-jensen@waterboards.ca.gov or (916) 341-5349.

Sincerely,

Jane Farwell-Jensen

Jane Farwell Jensen
Environmental Scientist
Hearings Unit, Division of Water Rights
Phone: (916) 341-5349
Fax: (916) 341-5400

State Water Resources Control Board

December 20, 2018

VIA ELECTRONIC EMAIL

El Sur Ranch
c/o Tom Berliner
Duane Morris LLP
One Market Plaza, Suite 2200
San Francisco, CA 94105
tberliner@duanemorris.com

California Department of Fish & Wildlife
c/o Kevin Takei
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
Kevin.Takei@wildlife.ca.gov

WATER RIGHT APPLICATION 30166 OF EL SUR RANCH, BIG SUR RIVER IN MONTEREY COUNTY

Dear Messrs. Berliner and Takei:

El Sur Ranch (ESR) and the California Department of Fish and Wildlife (CDFW) are hereby directed to prepare a Hearing Management Plan.

In 2016, ESR and CDFW hired an outside expert to develop technical details in support of their settlement discussions and informed the hearing team that they were continuing to engage in numerous conference calls and in person meetings to discuss settlement. ESR and CDFW requested that the State Water Resources Control Board (State Water Board) continue to hold in abeyance any further action regarding Application 30166.

In February and March 2017, ESR and CDFW requested abeyance to allow for additional time to complete settlement negotiations. On June 8, 2017, CDFW transmitted its final Instream Flow Regime Recommendations for the Big Sur River in Monterey County to the State Water Board. On June 20, 2017, ESR requested an extension of the abeyance period, stating that negotiations had significantly progressed and that they were optimistic that they would be able to submit a settlement to the State Water Board. ESR and CDFW have not provided any recent updates on the status of negotiations.

The State Water Board has an obligation to protect public trust uses to the extent feasible and consistent with the public interest. The resolution of these proceedings in the matter of Application 30166 is integral to the responsibilities of the State Water Board. I am unlikely to further extend the abeyance period given that ESR and CDFW have been negotiating a settlement agreement for 18 months since issuance of the final instream flow recommendations.

In anticipation that a supplemental hearing will be necessary to address CDFW's final instream flow recommendation, ESR and CDFW are instructed to develop a coordinated Hearing Management Plan in which they identify:

Water Right Application 30166
of El Sur Ranch, Big Sur River
Monterey County

- 1) any facts to which ESR and CDFW can stipulate,
- 2) the specific areas of fact and law that are in dispute,
- 3) the disputed factual issues on which ESR and CDFW intend to present evidence in the supplemental hearing, and
- 4) the amount of time necessary to conduct the supplemental hearing including the number of expert witnesses CDFW and ESR plan to call and any motions they plan to make in advance of the hearing.

ESR and CDFW are directed to submit a Hearing Management Plan by
January 31, 2019, 12:00 noon.

Questions regarding non-controversial procedural matters should be directed to Jane Farwell-Jensen at jane.farwell-jensen@waterboards.ca.gov or (916) 341-5349.

Sincerely,

ORIGINAL SIGNED BY:

Tam M. Doduc, Board Member
El Sur Ranch Hearing Officer

cc: [CURRENT SERVICE LIST](#)