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GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

TO: FILE: APPLICATION 32372

FROM: ORIGINAL SIGNED BY:
Amanda Montgomery, Manager
Permitting and Licensing Section
DIVISION OF WATER RIGHTS

DATE: May 5, 2017

SUBJECT: DEPUTY DIRECTOR DETERMINATION PURSUANT TO POLICY SECTION 3.3.2.5 FOR APPLICATION 32372 OF WESTMINSTER WOODS CAMP AND CONFERENCE CENTER TO APPROPRIATE WATER FROM UNNAMED SPRINGS TRIBUTARY TO DUTCH BILL CREEK THENCE THE RUSSIAN RIVER IN SONOMA COUNTY

The State Water Resources Control Board re-adopted a state policy for water quality control on October 22, 2013, that became effective February 4, 2014. The policy is entitled *Policy for Maintaining Instream Flows in Northern California Coastal Streams* (Policy). The proposed project is located within Sonoma County and; therefore, it is within the geographic area subject to the Policy. The Policy establishes principles and guidelines for maintaining instream flows in northern California coastal streams for the purposes of water right administration (Wat. Code, § 1259.4, subd.(b)). The Policy prescribes protective measures regarding the season of diversion, minimum bypass flow, and maximum cumulative diversion (diversion criteria). Pursuant to Policy Section 3.3.2.5, the Deputy Director may approve an exception to one or more of the diversion criteria for all or part of an application if the Deputy Director finds that (1) the applicant's existing diversions under another valid basis of right will be reduced if the application is approved, and (2) the benefit to fishery resources of the reduction outweighs the potential impacts to fishery resources if the application is approved.

Upon review of the information contained in the project file, acting under the re-delegation granted by the Deputy Director for Water Rights¹, I approve exceptions to the Policy

¹ On June 5, 2012, the State Water Board adopted Resolution No. 2012-0029. Pursuant to that resolution, the State Water Board delegated to the State Water Board's Deputy Director for Water Rights (Deputy Director) certain authorities that may be re-delegated. On July 6, 2012, the Deputy Director re-delegated preliminary determinations necessary to process applications, petitions, and registrations pursuant to the Policy and approving or denying exceptions to the policy provisions as outlined in the Policy, except for case by case exceptions sought pursuant to section 9.0. These authorities are re-delegated to the Assistant Deputy Director of the Permitting and Enforcement Branch and to the Section Manager of the Permitting and Licensing Section.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

requirements for diversion season, minimum bypass flow, and maximum cumulative diversion for Application 32372 pursuant to Section 3.3.2.5. This determination is based in part, on the August 11, 2016, Public Trust Resources Consideration, which documents that: (1) existing diversion under another valid basis of right will reduce if the application is approved; and (2) benefit to fishery resources of the diversion reduction outweighs the potential impacts to fishery resources if the application is approved.

State Water Resources Control Board

TO: FILE APPLICATION A032372 / STATEMENT S024280

FROM: ORIGINAL SIGNED BY:
Sarah Sugar
Environmental Scientist
Permitting and Licensing Section
DIVISION OF WATER RIGHTS

DATE: AUG 11 2016

SUBJECT: PUBLIC TRUST RESOURCES CONSIDERATION FOR WATER RIGHT
APPLICATION 32372 AND 1707 PETITION FOR CHANGE ON STATEMENT
24280 OF WESTMINSTER WOODS CAMP AND CONFERENCE CENTER
(APPLICANT)

This memorandum is an evaluation of the effects of the proposed project and is based on review and evaluation of the following information sources:¹

1. Application to Appropriate Water by Permit, March 30, 2015 (Application 2015)
2. Petition for Change on Statement 24280 Pursuant to Water Code Section 1707, March 30 2015 (Petition 2015)
3. Revised Water Supply Report, prepared by Center for Ecosystem Management and Restoration, October 21, 2015 (CEMAR 2015)
4. 2015 Fisheries Restoration Grant Program, Initial Study and Mitigated Negative Declaration, SCH #2014122048, prepared by CDFW, January 21, 2015 (CDFW 2015)
5. Policy for Maintaining Instream Flows in Northern California Coastal Streams, prepared by Division of Water Rights, readopted February 4, 2014 (Division 2014)
6. Request for exception for a voluntary modification of authorized diversion for the enhancement of fish and wildlife resources under North Coast Instream Flow Policy Section 3.3.2.5, prepared by Westminster Woods Camp and Conference Center, March 13, 2015 (Westminster Woods 2015)
7. WC-120 Westminster Woods Water Conservation and Storage Project, Sensitive Plant Survey Results, prepared by J. Kalt for CDFW, April 7, 2016 (CDFW 2016)
8. California Wildlife Habitat Relationships Life History Accounts: California Giant Salamander, prepared by CDFW, 1997 (CDFW 1997)
9. California Wildlife Habitat Relationships Life History Accounts: Foothill Yellow-legged Frog, prepared by CDFW, updated January 2000 (CDFW 2000a)

¹ Source documents are located in the Division of Water Rights file for Application 32372.

10. California Wildlife Habitat Relationships Life History Accounts: Western Pond Turtle, prepared by CDFW, updated March 2000 (CDFW 2000b)
11. Species Account: California Freshwater Shrimp, prepared by U.S. Fish and Wildlife Service, December 5, 2007 (USFWS 2007)

Division of Water Rights (Division) staff has determined that approval of Water Right Application 32372, with conditions, will not result in unreasonable effects on public trust resources.

Project and Watershed Description

On March 30, 2015, the Applicant filed Application 32372 to appropriate water by permit and a petition for change pursuant to Water Code Section 1707 (1707 change petition) to dedicate water for instream beneficial uses under Statement of Diversion and Use 24280 (S024280). The application and 1707 change petition were submitted as part of a fisheries enhancement project to improve instream flow in Dutch Bill Creek. The California Department of Fish and Wildlife (CDFW), National Fish and Wildlife Foundation, National Oceanic and Atmospheric Administration's (NOAA) Restoration Center are in support of this project. The Applicant seeks to divert 0.86 acre-feet per annum (afa) at a maximum rate of 0.003 cubic feet per second (cfs) from November 1 through June 30 from Unnamed Springs tributary to Dutch Bill Creek, thence the Russian River. The water would be stored in two, above-ground tanks for irrigation of two athletic fields (0.73 acre), fire protection, and emergency domestic use at the camp. The Applicant has previously met these needs with water directly diverted from Dutch Bill Creek from June through October under a riparian claim (S024280). An appropriative water right permit would allow diversion to offstream storage from the springs and dedication of 0.27 cfs under the Applicant's riparian claim to instream flow in Dutch Bill Creek from June 1 through October 31 of each year.

The project has been funded through grants from CDFW, the National Fish and Wildlife Foundation, and NOAA's Restoration Center. The Applicant has also reduced overall water demand of the athletic fields by 1) removing approximately 25% of the total overall irrigated area of the camp (previously 1 acre); 2) replacing the grass in the remaining 75% of the area with more drought-tolerant turf; and 3) installing a more efficient irrigation system.

CDFW and the National Marine Fisheries Service (NMFS) have identified Dutch Bill Creek, Green Valley Creek, Mark West Creek, and Mill Creek as high priority California Central Coast (CCC) coho salmon tributaries of the Russian River. These four tributary watersheds provide critical spawning and rearing habitat for wild populations of state and federally endangered CCC coho salmon, and for the Russian River Coho Salmon Captive Broodstock Program. Federally threatened juvenile CCC steelhead also use these four Russian River tributaries and require similar rearing habitat and water quality conditions as juvenile CCC coho salmon during the summer months. Juvenile CCC coho salmon and CCC steelhead can survive very dry conditions in pools in the upper watersheds, provided the pools have sufficient water and stream connectivity to maintain appropriate temperature, dissolved oxygen, and other water quality conditions. During the drought, the four tributaries have sustained some of the last remaining spring and summer rearing habitat for coho salmon and steelhead in the Russian River watershed.

The Applicant would reduce the rate of diversion from 120 gallons per minute (gpm) (during the drier part of the year) to less than 1.5 gpm (during the wetter part of the year) as part of the

proposed project. The instream flow dedication would help maintain higher flows and a higher wetted volume downstream of the Applicant's riparian point of diversion (POD) on Dutch Bill Creek during the summer and fall dry season, improving habitat for juvenile coho and steelhead rearing. According to the Applicant, the project was designed with the Center for Ecosystem Management and Restoration, Gold Ridge Resources Conservation District, Occidental Arts and Ecology Center, Trout Unlimited, and University of California Cooperative Extension / California Sea Grant through the Russian River Coho Water Resources Partnership.

California Environmental Quality Act

The project was funded under CDFW's 2015 Fisheries Restoration Grant Program (2015 FRGP). The objective of the 2015 FRGP was to improve spawning success for adult salmon and steelhead as well as to increase survival for eggs, embryos, and rearing juvenile salmon. In accordance with the California Environmental Quality Act (CEQA), CDFW, as Lead Agency, prepared an Initial Study/Mitigated Negative Declaration (IS/MND) (State Clearinghouse #2014122048) for the 2015 FRGP, which included the proposed project. CDFW circulated the Draft IS/MND for public review on December 19, 2014, and filed a Notice of Determination on January 21, 2015.

The State Water Board is a Responsible Agency for the project and will issue a Notice of Determination if a permit and approval order are issued.

In addition to any consideration under CEQA, the State Water Board is required to consider the effect of the proposed project on public trust resources and, where feasible, avoid or minimize harm to those resources.² Public trust resources may include, but are not limited to, wildlife, fish, aquatic-dependent species, streambeds, riparian areas, tidelands, and recreation. This requirement is independent from CEQA, and the CEQA baseline should not be construed as the appropriate baseline for consideration of public trust resources. Information and analyses contained in the Final IS/MND relevant to public trust resources are integrated into the discussion below as appropriate.

Summary of Public Trust Findings

Division staff has identified conditions that, together with mitigation measures identified in the Final IS/MND, would ensure that the proposed project has no unreasonable effects on public trust resources. After careful review of the project and associated documents, staff believes that 1) permit terms requiring a maximum annual diversion volume and maximum diversion rate; and 2) approval of the 1707 change petition will reduce project effects to public trust resources. The permit terms have been incorporated into the draft permit. A compliance plan is required to be submitted to the Division detailing how the Applicant will comply with permit terms and conditions.

Anadromous Salmonids and Water Availability

The State Water Board has adopted a Policy for Maintaining Instream Flows in Northern California Coastal Streams (Policy) that establishes principles and guidelines for maintaining

² (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346, 658 P.2d 709])

instream flows in northern California coastal streams for the purposes of water right administration (Wat. Code, § 1259.4, subd. (b)). The Policy contains guidelines for evaluating whether a proposed water diversion, in combination with existing diversions in a watershed, may affect instream flows needed for the protection of fishery resources. Accordingly, the Policy prescribes protective measures regarding the season of diversion, minimum bypass flow, and maximum cumulative diversion. Water Right applications and petitions within the Russian River watershed are subject to the Policy.

The Applicant has requested an exception from the regionally protective criteria for the season of diversion, minimum bypass flow, and maximum cumulative diversion pursuant to Policy Section 3.3.2.5. Because the proposed diversion rate is low (less than 1.5 gallons per minute), the Applicant requires a longer diversion season and an exception to the bypass in order to store enough water to meet summer and fall turf irrigation needs.

Under Policy Section 3.3.2.5, the Deputy Director of Water Rights may approve an exception to one or more of the diversion criteria for an application if:

1. The [A]pplicant's existing diversions under another valid basis of right will be reduced if the application is approved; and,
2. The benefit to fishery resources of the reduction outweighs the potential impacts to fishery resources if the application is approved.

Division staff recommends approval of the exceptions to season of diversion, minimum bypass flow, and maximum cumulative diversion and has determined the project meets both of the above-listed standards, as described in documentation in the project file. The first standard would be met with the Applicant's concurrent 1707 change petition. The second would be accomplished primarily by shifting the Applicant's diversions from the summer and fall, when flows are naturally lower, to late-fall through spring, when flow is less of a limiting factor for juvenile salmonids in Dutch Bill Creek.

The Unnamed Stream downstream of the springs does not support anadromous salmonids. In December 2013, John Green, Lead Scientist with the Gold Ridge Resource Conservation District, performed a stream gradient survey of the stream from the proposed POD to the confluence with Dutch Bill Creek. Gradient information can sometimes be used to estimate the upper limit of anadromy:³ per Appendix A, Section A.1.4 of the Policy, if a stream reach has a continuous longitudinal slope of 12 percent or greater for at least 330 feet, it can be assumed that anadromous fish cannot move past the lowest point of the gradient. Below the POD, Mr. Green found the slope to be 17.1 percent over a distance of 400 feet, setting the upper limit of anadromy at the Unnamed Stream's confluence with Dutch Bill Creek. Consequently, the discussion below only addresses anadromous salmonids in Dutch Bill Creek.

Juvenile CCC coho salmon and CCC steelhead can survive very dry conditions in pools in the upper watershed, provided the pools have sufficient water and stream connectivity to maintain appropriate temperature, dissolved oxygen levels, and other water quality conditions. Approving the permit and the 1707 change petition would help maintain these habitat conditions. Under typical May streamflow conditions, existing diversions from Dutch Bill Creek, including the

³ The upper limit of anadromy represents the upstream end of the range of anadromous fish that currently are or have been historically present year-round or seasonally, whichever extends the furthest upstream.

Applicant's diversion under S024280, impair natural flow by 10-25% in the lower reaches of Dutch Bill Creek. Replacing the Applicant's existing diversion under S024280 with the proposed diversion under Application 32372 would reduce May average flow impairment to 5-10%. Similarly, according to the Applicant's calculations, summer (July – September) flow impairment in the same reach would drop from 40-100%, with the existing diversion under S024280, to 10-25%.

However, these reductions in flow impairment are linked to the Applicant's proposed maximum diversion rate and permit face-value. Inclusion of the following permit term, substantially as follows, in any permit or license issued pursuant to Application 32372 would protect habitat for anadromous fish:

*The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **0.86 acre-foot per year** by storage to be collected from November 1 of each year to June 30 of the succeeding year.*

The Applicant would also reduce its diversion rate from 120 gpm to less than 1.5 gpm, which would reduce the instantaneous impairment of flows in Dutch Bill Creek caused by the diversion. The following permit term, should also be included substantially as follows:

*The maximum rate of diversion to offstream storage shall not exceed **1,939 gallons per day**.*

Finally, to ensure accurate compliance with these terms, the following permit term, substantially as follows, should be included in any permit or license issued pursuant to Application 32372:

No water shall be diverted to offstream storage under this right unless right holder is monitoring and reporting said diversion of water. This monitoring shall be conducted using devices and methods satisfactory to the Deputy Director for Water Rights. The devices shall be capable of continuous monitoring of the rate and quantity of water diverted and shall be properly maintained.

Right holder shall provide the Division of Water Rights with evidence that the devices have been installed with the first annual report submitted after device installation. Right holder shall provide the Division of Water Rights with evidence that substantiates that the devices are functioning properly every five years after device installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights.

Right holder shall maintain a record of all diversions under this right that includes the date, time, rate of diversion at time intervals of one hour or less, and the amount of water diverted. The records shall be submitted with the annual report or whenever requested by the Division of Water Rights.

Other Special-Status Species

The IS/MND evaluated potential effects to special-status species in the area. Staff also conducted a search of the California Natural Diversity Database (CNDDDB) using CDFW's Biogeographic Information and Observation System to identify sensitive biological resources that have been documented within a five-mile radius of the approximate center of the project area and are either presumed extant or possibly extirpated. The results are described in Table 1

below. Observations of two species, Greene’s narrow-leaved daisy (*Erigeron greenei*) and California giant salamander (*Dicamptodon ensatus*), have been recorded within the general project area.

Table 1 – Special-Status Species Observed within Five Miles of Project⁴

| Common Name | Scientific Name | State & Federal Listing |
|--|---|---------------------------------------|
| <i>Flora</i> | | |
| Sonoma alopecurus | <i>Alopecurus aequalis</i> var. <i>sonomensis</i> | Endangered (Federal ESA); 1B.1 (CNPS) |
| Napa false indigo | <i>Amorpha californica</i> var. <i>napensis</i> | 1B.2 (CNPS) |
| Baker’s manzanita | <i>Arctostaphylos bakeri</i> ssp. <i>bakeri</i> | Rare (State ESA); 1B.1 (CNPS) |
| swamp harebell | <i>Campanula californica</i> | 1B.2 (CNPS); SS (BLM); |
| bristly sedge | <i>Carex comosa</i> | |
| Vine Hill ceanothus | <i>Ceanothus foliosus</i> var. <i>vineatus</i> | 1B.1 (CNPS) |
| holly-leaved ceanothus | <i>Ceanothus purpureus</i> | 1B.2 (CNPS) |
| Pennell’s bird’s-beak | <i>Cordylanthus tenuis</i> ssp. <i>capillaris</i> | Endangered (Federal ESA); 1B.2 (CNPS) |
| Greene’s narrow-leaved daisy | <i>Erigeron greenei</i> | 1B.2 (CNPS) |
| fragrant fritillary | <i>Fritillaria liliacea</i> | 1B.2 (CNPS); SS (USFS) |
| thin-lobed horkelia | <i>Horkelia tenuiloba</i> | 1B.2 (CNPS); SS (BLM) |
| Crystal Springs lessingia | <i>Lessingia arachnoidea</i> | 1B.2 (CNPS) |
| North Coast semaphore grass | <i>Pleuropogon hooverianus</i> | Threatened (State ESA); 1B.1 (CNPS) |
| Point Reyes checkerbloom | <i>Sidalcea calycosa</i> ssp. <i>rhizomata</i> | 1B.2 (CNPS) |
| two-fork clover | <i>Trifolium amoenum</i> | Endangered (Federal ESA); 1B.1 (CNPS) |
| saline clover | <i>Trifolium hydrophilum</i> | 1B.2 (CNPS) |
| Methuselah’s beard lichen | <i>Usnea longissima</i> | 4.2 (CNPS); SS (BLM) |
| <i>Fauna</i> | | |
| pallid bat | <i>Antrozous pallidus</i> | SSC (CDFW); SS (BLM & USFS) |
| Sonoma tree vole | <i>Arborimus pomo</i> | SSC (CDFW) |
| obscure bumble bee | <i>Bombus caliginosus</i> | |
| western bumble bee | <i>Bombus occidentalis</i> | SS (USFS) |
| California giant salamander | <i>Dicamptodon ensatus</i> | SSC (CDFW) |
| western pond turtle | <i>Emys marmorata</i> | SSC (CDFW); SS (BLM & USFS) |
| western red bat | <i>Lasiurus blossevillii</i> | SSC (CDFW) |
| hoary bat | <i>Lasiurus cinereus</i> | |
| steelhead - central California coast DPS | <i>Oncorhynchus mykiss</i> <i>irideus</i> | Threatened (Federal); |
| osprey | <i>Pandion haliaetus</i> | Watch List (CDFW); SS (CDF) |
| foothill yellow-legged frog | <i>Rana boylei</i> | SSC (CDFW); SS (BLM & USFS) |
| California freshwater shrimp | <i>Syncaris pacifica</i> | Endangered (State & Federal ESA); |

BLM – U.S. Bureau of Land Management; CDF – California Department of Forestry and Fire Protection; CDFW – California Department of Fish and Wildlife; CNPS – California Native Plant Society; ESA – Endangered Species Act; SSC – Species of Special Concern; SS – Sensitive Species; USFS – U.S. Forest Service

⁴ CNDDDB searches do not necessarily identify observations of special-status anadromous fish

Flora

Consistent with mitigation measures in the IS/MND, a sensitive plant survey of the project area was conducted on May 27, 2015 to assess potential project impacts to botanical resources. The survey did not identify any special-status plant species in the project area. Moreover, the majority of potential impacts to special-status species identified in the IS/MND were associated with project construction. The storage tanks and infrastructure have already been constructed; since filing Application 32139, the Applicant has begun to divert water from the springs under a small domestic use registration (D032559). Staff does not anticipate the diversion causing future impacts to any potentially present special-status plant species.

Terrestrial Fauna

As discussed above, the majority of potential impacts to special-status species identified in the IS/MND were associated with project construction. Staff does not anticipate the diversion causing future impacts to any potentially present terrestrial species.

Aquatic Invertebrates, Amphibians and Turtles

The diversion from the springs could conceivably impact special-status species dependent on water bodies for part or all of their life cycle. The steepness of the channel makes it unlikely to support California freshwater shrimp (*Syncaris pacifica*) or western pond turtle (*Emys marmorata*).

Foothill yellow-legged frog (*Rana boylei*) or California giant salamander (*Dicamptodon ensatus*) may use the channel for breeding; however, the proposed diversion rate at the POD (0.003 cfs, or ~1.35 gpm) is very low as compared with predicted flow at the POD. Based on: 1) local precipitation data; 2) available mean daily discharge data at USGS Gage 11467200 at Austin Creek near Cazadero from 1959 through 1966 and 2003 through 2015; and 3) modeled drainage area at the POD, the median unimpaired flow during the proposed season of diversion is estimated to be 0.08 cfs, or 26 times the maximum proposed diversion rate. CDFW staff believes the remaining flow after the diversion should be sufficient for the two species during the breeding season. Consequently, unreasonable effects to either species are unlikely.