State Water Resources Control Board

Division of Water Rights
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Linda S. Adams
Secretary for Environmental Protection

Arnold Schwarzenegger
Governor

MITIGATED NEGATIVE DECLARATION

Pursuant to Section 21080(c)
Public Resources Code

To:	Office of Planning & Research State Clearinghouse P.O. Box 3044 Sacramento, CA 95812-3044	From:	State Water Resources Control Board Division of Water Rights P.O. Box 2000 Sacramento, CA 95812-2000

PROJECT TITLE: McEvoy Ranch Applications to Appropriate Water (A031076 and A031077); Petition for Change of License 6564 (Application 17596); and Petitions for Extension of Time and Petitions for Change of Permits 20549, 20550, 20551, and 20812 (Applications 25209, 25412, 26507, and 30121 respectively)

APPLICANT/PETITIONER: McEvoy Land, LLC
c/o Barry Epstein
Fitzgerald, Abbott & Beardsley LLP
PO Box 12867
Oakland, CA 94604-2867

PROJECT LOCATION:

The project is situated on the McEvoy Ranch, which is in Marin County approximately five miles southwest of the City of Petaluma. The site is located within Sections 30 and 31 of Township 4N, Range 7W, MDB&M

PROJECT DESCRIPTION:

The project includes approval of two water right Applications, five Petitions for Change of existing permitted and licensed water rights, and four Petitions for Extension of time for the McEvoy Ranch. The project consists of water diversion and storage for irrigation of approximately 153 acres of existing and proposed olive orchard. Water will be diverted from an Unnamed Stream tributary to San Antonio Creek, thence the Petaluma River. Other existing and proposed water uses include fire protection, stockwatering, and recreation. The project includes expansion of existing water storage reservoirs, establishing new olive orchards (i.e., expansion of the place of use), and allowance of additional time to put water to beneficial use under existing water right permits. Water storage occurs in six existing reservoirs. A summary of the existing and proposed water rights is provided in Table 1 followed by descriptions of the proposed applications and petitions.

Table 1: Summary of Existing and Proposed Water Rights

Application No.	Permit No.	License No.	Storage (acre-feet)	Place of Use[1] (acres)		Purpose of Use	
				existing	proposed	existing	proposed
17596	11111	6564	15	--[2]	25.6	I,J,S,H	I,E,R,S
25209	20549	--	12.4	42	153	I,J,S,H	I,E,R,S
25412	20550	--	9.6	42	153	I,J,S,H	I,E,R,S
26507	20551	--	7.0	42	25.6	I,J,S,H	I,E,R.S
30121	20812	--	54	96	153	I,J,S,H	I,E,R,S
31076	--	--	3.4	--	153	--	I,E,R
31077	--	--	1.6	--	153	--	I,E,R
Totals			**103**	**96**	**153**		

[1] *Places of use overlap and proposed change constitutes a net increase of 57 acres of which 42.8 would be converted to olive production or landscaping.*
[2] *Existing POU not expressed in acres for License 6564.*

E=fire protection, I=irrigation, J=industrial, H=fish culture, R= recreation, S= stockwatering

Water Rights Applications

Application 31076 seeks an additional 3.4 afa of diversion and storage in Reservoir 2 (with rediversion into Reservoirs 3 and 4). Application 31077 (A031077) seeks an additional 1.6 afa of diversion and storage in Reservoir 3 (with rediversion into Reservoir 4). The proposed diversion season is November 1 through May 1. The proposed place of use is described in Table 2.

Table 2: Proposed place of use for A031076, A031077, A025209, A025412 and A030121

¼ -¼	Acres	Section	Township	Range	Base and Meridian
NE¼ of NW¼,	3.8	31	4N	7W	MDB&M
NW¼ of NE¼	8	31	4N	7W	MDB&M
SE¼ of SW¼,	20.4	30	4N	7W	MDB&M
NE¼ of SW¼	20	30	4N	7W	MDB&M
NW¼ of SW¼	2.3	30	4N	7W	MDB&M
SW¼ of SE¼	18	30	4N	7W	MDB&M
NW¼ of SE¼	30	30	4N	7W	MDB&M
SW¼ of NE¼	23.7	30	4N	7W	MDB&M
SE¼ of NE¼	0.6	30	4N	7W	MDB&M
NW¼ of NE¼	2.2	30	4N	7W	MDB&M
SE¼ of NW¼	2.5	30	4N	7W	MDB&M
NE¼ of NW¼	7.5	30	4N	7W	MDB&M
NW¼ of NW¼	2	30	4N	7W	MDB&M
SW¼ of NW¼	12	30	4N	7W	MDB&M
total	**153**				

Petitions for Change

The proposed project includes approval of petitions for changes to Water Right License 6564 (A017596) and Water Right Permits 20549, 20550, 20551, and 20812 (Applications 25209, 25412, 26507, and 30121, respectively). The petitions request changes to the place of use and purpose of use (Table 1). These petitions also request addition of points of diversion and re-diversion for these rights.

Petitions for Extension of Time

The proposed project includes approval of petitions for extension of time for Permits 20549, 20550, 20551, and 20812 (A025209, A025412, A026507, and A030121 respectively). All of the reservoirs approved under these permits have been constructed and filled to the permitted capacity with water. The time extensions are needed so the authorized and expanded place of use can be fully developed and the permitted quantity of water can be put to full beneficial use. The development period for Permits 20549, 20550, and 20551 expired in 1994. The development period for Permit 20812 expired in 1999. Approval of the Petitions would extend the water development period to allow for further use of water under Permits 20549, 20550, 20551, and 20812.

Additional details describing the project are included in the Initial Study prepared for this project which can be downloaded from the following website:
http://www.waterrights.ca.gov/ceqadocs.html

DETERMINATION:

The State Water Resources Control Board has determined that the above-described project will have a less-than-significant effect on the environment for the reasons specified in the Initial Study prepared for this project.

PERMIT AND LICENSE CONDITIONS:

Source: Water is to be appropriated from an Unnamed Stream tributary to San Antonio Creek, thence the Petaluma River, thence San Pablo Bay in Marin County.

Point of Diversion/Rediversion:

Application No.	Permit No.	License No.	POD	PORD
17596	11111	6564	Res. 1	Res. 6
25209	20549	--	Res. 3	Res. 4
25412	20550	--	Res. 2	Res. 3, 4
26507[1]	20551	--	Res. 1 & 6	Res. 6
30121	20812	--	Res. 4, 5	Res. 3, 5
31076	--	--	Res. 2	Res. 3 & 4
31077	--	--	Res. 3	Res. 4

[1] *Includes re-distribution of 1.9 acre feet of storage from Res. 1 to Res. 6*

Amounts and Seasons:

Application No.	Permit No.	License No.	Season	Amount (acre-feet/year)
17596	11111	6564	Nov 1-Apr 30	15
25209	20549	--	Oct 1-Apr 30	12.4
25412	20550	--	Nov 1-Apr 1	9.6
26507[1]	20551	--	Oct 1-Apr 30	7.0
30121	20812	--	Oct 1-May 31	54
31076	--	--	Nov 1-May 1	3.4
31077	--	--	Nov 1-May 1	1.6

Purposes of Use: Fire Protection, Irrigation, Recreation, Stockwatering

Place of Use: See Table 2

Permit Terms/Mitigation Measures:

Mitigation measures have been incorporated into the project to avoid potentially significant environmental impacts. Specific terms reflecting the mitigation measures, written substantially as follows, will be included in the appropriate permits, licenses, or orders issued by the State Water Board. The following permit terms will be included in any permits or licenses issued pursuant to Water Right Applications A031076 and A031077 and in any licenses, orders or amended permits issued for approval of the Petitions for Change of Water Right Permits 20549, 20550, 20551, and 20812 (Applications 25209, 25412, 26507, and 30121, respectively):

- Cultivation of the new places of use, as shown on New Place of Use Map No. 01, on file with the Division of Water Rights, within the following areas:

  N½ of NW¼ and SW¼ of NW¼ and SE¼ of SW ¼ and NW¼ of SW¼ of Section 30, T4N, R7W, MDB&M, and NE¼ of NW¼ and NW¼ of NE¼ of Section 31, T4N, R7W, MDB&M

  shall be conducted in accordance with the following recommendations as specified in the September 7,1999 geotechnical evaluation prepared for this project:

  a) cutting pits for individual trees instead of continuous cross furrowing;

  b) minimizing the depths of cuts as much as feasible; and

  c) maintaining uniform slopes and avoiding depressed areas to facilitate runoff.

  For the purposes of this permit term cultivation shall include site preparation, planting, installation of irrigation systems, and all other activities associated with establishment and maintenance of new orchards. Prior to issuance of a license for this permit, Permittee shall submit evidence, for approval by the Chief of the Division of Water Rights, which demonstrates that cultivation has occurred in accordance with this term. Evidence shall include certification by a registered Geologist.

- Permittee shall install staff gages or other measuring devices in the reservoirs, satisfactory to the Chief of the Division of Water Right, for the purpose of determining water levels in the reservoir. The measuring devices must be maintained in operating condition as long as water is being diverted or used under this permit.

  Permittee shall record the water surface elevation readings on the last day of each month. Permittee shall maintain a record of all water surface elevation readings and shall submit these records with annual progress reports, and whenever requested by the Division.

  The State Water Resources Control Board may require the release of water that cannot be verified as having been collected under a valid basis of right.

- Prior to diversion or use of water under this permit, Permittee shall install and maintain in-line flow meters, satisfactory to the Chief of the Division of Water Rights, that measure the instantaneous rate and the cumulative amount of water withdrawn from each Reservoir and consumptively used. Permittee shall maintain a record of the end-of-the-month meter readings and of the days of actual water withdrawal for consumptive use, and shall submit these records with annual progress reports, and whenever requested by the Division.

- Permitee shall prevent any debris, soil, silt, cement that has not set, oil, or other such foreign substance to enter into or be placed where it may be washed by rainfall runoff into the waters of the State.

- For the protection of fish, wildlife, and public trust resources, under all bases of right, Permittee shall, during the period October 1 through May 31, bypass a minimum of 0.5 cubic feet per second. Under all bases of right Permittee shall bypass the total streamflow from June 1 through September 30. The total streamflow shall be bypassed whenever it is less than the 0.5 cubic feet per second. Bypass flows shall be met downstream of Reservoir 4.

- Based on the information contained in the Division's files, riparian water has not been used on the place of use. Diversion of water is not authorized under this permit if in the future the Permittee diverts water under riparian right. With the Chief of the Division's approval, Permittee may use water under basis of riparian right on the authorized place of use, provided that Permittee submits reliable evidence to the Chief of the Division quantifying the amount of water that Permittee likely would have used under the basis of riparian right absent the appropriation authorized by this permit. The Chief of the Division is hereby authorized to approve or reject any proposal by Permittee to use water under the basis of riparian right on the place of use authorized by this permit.

- Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars and pestles) and locally darkened midden soils containing some of the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators

generally include: fragments of glass, ceramic and metal objects; milled and split lumber; and structure and feature remains such as building foundations, privy pits, wells and dumps; and old trails. The Chief of the Division of Water Rights shall be notified of the discovery and a professional archeologist shall be retained by the Permittee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Chief of the Division of Water Rights for approval. Project-related activities shall not resume within 100 feet of the find until all approved mitigation measures have been completed to the satisfaction of the Chief of the Division of Water Rights.

- If human remains are encountered, then the Permittee/Licensee shall comply with Section 15064.5 (e) (1) of the CEQA Guidelines and the Public Resources Code Section 7050.5. All project-related ground disturbance within 100 feet of the find shall be halted until the county coroner has been notified. If the coroner determines that the remains are Native American, the coroner will notify the Native American Heritage Commission to identify the most-likely descendants of the deceased Native Americans. Project-related ground disturbance, in the vicinity of the find, shall not resume until the process detailed under Section 15064.5 (e) has been completed. Project-related ground disturbance, in the vicinity of the find, shall not resume until the process detailed under Section 15064.5 (e) has been completed and evidence of completion has been submitted to the Chief of the Division of Water Rights.

The following additonall permit term, substantially as follows, shall be included in any water right permits, licenses or orders issued pursuant to Applications 31076 and 31077:

- Within three months of the issuance of this permit, the Permittee shall submit a Compliance Plan for approval by the Chief of the Division of Water Rights that will demonstrate compliance with the flow bypass terms specified in this permit. The Compliance Plan shall include the following:

  a) A description of the physical facilities (i.e., outlet pipes, siphons, pipelines, bypass ditches, splitter boxes etc.) that will be constructed or have been constructed at the project site and will be used to bypass flow.
  b) A description of the gages and monitoring devices that will be installed or have been installed to measure stream flow and/or reservoir storage capacity, including any necessary calibration.
  c) A time schedule for the installation and rating of these facilities.
  d) A description of the frequency of data collection and the methods for recording bypass flows and storage levels.
  e) An operation and maintenance plan that will be used to maintain all facilities in good condition.
  f) A description of the events that will trigger recalibration of the monitoring devices, and the process that will be used to recalibrate.

  The Permittee shall be responsible for all costs associated with developing the Compliance Plan, and installing and maintaining all flow bypass and monitoring facilities described in the Compliance Plan.

The monitoring data shall be maintained by the Permittee and made available to the Chief of the Division of Water Rights, upon request.

Diversion or use of water prior to approval of the Compliance Plan and the installation of facilities specified in the Compliance Plan is not authorized.

- No water shall be diverted or used under this permit until Permittee has installed devices, satisfactory to the State Water Resources Control Board, which are capable of measuring the bypass flows required by the conditions of this permit. Said measuring devices shall be properly maintained.

The following additonal permit term, substantially as follows, shall be included in any licenses, orders or amended permits issued for approval of the Petitions for Change for Water Right Permits 20549, 20550, 20551, and 20812 (Applications 25209, 25412, 26507, and 30121, respectively):

- Within three months of the issuance of this permit, the Permittee shall submit a Compliance Plan for approval by the Chief of the Division of Water Rights that will demonstrate compliance with the flow bypass terms specified in this permit. The Compliance Plan shall include the following:

  a) A description of the physical facilities (i.e., outlet pipes, siphons, pipelines, bypass ditches, splitter boxes etc.) that will be constructed or have been constructed at the project site and will be used to bypass flow.
  b) A description of the gages and monitoring devices that will be installed or have been installed to measure stream flow and/or reservoir storage capacity, including any necessary calibration.
  c) A time schedule for the installation and rating of these facilities.
  d) A description of the frequency of data collection and the methods for recording bypass flows and storage levels.
  e) An operation and maintenance plan that will be used to maintain all facilities in good condition.
  f) A description of the events that will trigger recalibration of the monitoring devices, and the process that will be used to recalibrate.

  Permittee shall implement the compliance plan within one year of the Division's approval of the plan. Diversion or use of water is not authorized under this permit if the Permittee has not 1) implemented the compliance plan or 2) installed devices satisfactory to the State Water Resources Control Board, which are capable of measuring the bypass flows required by the conditions of this permit within one year of the Division approval of the plan. Said measuring devices shall be properly maintained.

  The Permittee shall be responsible for all costs associated with developing the Compliance Plan, and installing and maintaining all flow bypass and monitoring facilities described in the Compliance Plan.

  The monitoring data shall be maintained by the Permittee and made available to the Chief of the Division of Water Rights, upon request.

The Proposed Mitigated Negative Declaration and the Initial Study in support of the proposed Mitigated Negative Declaration are available on the Division of Water Rights website at http://www.waterrights.ca.gov/ceqadocs.html. A hard copy of these documents or additional information concerning the proposed action may be obtained by writing to Eric Oppenheimer, Division of Water Rights, P.O. Box 2000, Sacramento, CA 95812-2000, by email at Eioppenheimer@waterboards.ca.gov or by telephoning Mr. Oppenheimer at (916) 341-5384.

Contact Person: Eric Oppenheimer	Telephone: (916) 341-5384 email: Eioppenheimer@waterboards.ca.gov

APPROVAL OF THE ABOVE IS RECOMMENDED BY:

Eric Oppenheimer 3/24/09

Eric Oppenheimer, Chief Date
Watershed Unit 2

FOR Steven Herrera, Chief Date
Water Rights Permitting Section

APPROVED:

Victoria A. Whitney 3/24/09

Victoria A. Whitney, Chief Date
Division of Water Rights