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GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

DEC 26 2012

In Reply Refer to:
AB:A031021

California Department of Fish and Game
c/o Scott Wilson, Acting Regional Manager
Bay Delta Region
7329 Silverado Trail
Napa, CA 94558

Dear Mr. Wilson:

RESPONSE TO COMMENTS FOR MARTINELLI WATER RIGHT PROJECT (APPLICATION 31021), PROPOSED MITIGATED NEGATIVE DECLARATION ("MND"), SCH#2012102063, SONOMA COUNTY

The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) received and reviewed the comments submitted by Department of Fish and Game (DFG) concerning the above mentioned project. DFG asserts that the proposed project may adversely impact the California red-legged frog (*Rana aurora draytonii*, CRLF) and finds the water right permit terms insufficient.

California Red-Legged Frog

The Division has considered your recommendation concerning the incidental take of the CRLF. The Division has determined that the draft permit's existing term 0000014 is sufficient, in that it does not authorize any act which results in a taking of a threatened or endangered species and it requires the permittee to obtain authorization for incidental take prior to construction or operation of the project.

Vineyard Conversion

Division staff considered the request regarding development of the place of use, and a proposed term to submit a vineyard plan for placement of vineyard blocks. DFG requests that 254 acres of potential vineyard development be further specified prior to permit issuance, due to assertion of insufficient water supply based on this application and existing rights. The place of use is also supplied by an existing non-jurisdictional offstream pond, which has a 49 acre feet capacity and is filled with diffuse surface flow. Additionally, on July 15, 1999, the applicant filed water right Application 31022 to appropriate 200 acre-feet of water to the place of use.

Water supply to the 304 acres of vineyard (inclusive of 254 proposed acres), absent any consideration of Application 31022, includes 45 acre feet from Application 31021 and

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49 acre feet from the existing non-jurisdictional pond. These sources are estimated to supply 0.3 foot of water per acre. This amount is within range of the estimated annual need of a newly planted drip irrigated vineyard (0.3 to 0.5 foot per acre¹). Additionally, the vineyard will be planted in phases and edge/avenue effects will reduce the net plantable acreage by 15-30%, which should lessen the water demands of the place of use.

The proposed permit includes three terms to address mitigation buffers for protection of CRLF wildlife movement corridors (Terms 0000206, 0400500, 0400205). Detailed discussion and justification for these terms is included in the Initial Study MND pages 71-73, and not repeated here. The applicant held meetings with DFG on several occasions (including October 2010 and May 2011) to discuss strategy for preserving and protecting the habitat for CRLF, and the terms included were based on the outcome of these discussions. Furthermore, existing scientific literature, per J.B. Bulger et al.², found that CRLF travel readily through upland habitats including agricultural land (i.e. recently tilled fields and maturing crops), and further travel patterns “suggests de facto that there was neither avoidance of nor preference for any particular landscape feature or vegetation type.” Based on the Bulger et al. study findings, in consideration with the significant mitigation/avoidance strategy already proposed in terms 0000206, 0400500, and 0400205, a vineyard conversion plan term will not be included.

Invasive Species Management

The Division has also considered the recommendation concerning invasive species management. Draft permit term 0400205 part (e) states that an eradication plan will be developed if bullfrogs are discovered, while DFG notes that bullfrogs have already been documented in nearby reservoirs, and a survey requirement is not included in the draft permit term.

The DFG proposed term requests bullfrogs be addressed at all ponds on the property, which the Division declines to include in the term as the four existing ponds (two ponds described in the Initial Study as non-jurisdictional and two licensed ponds) are not covered by the Application 31021 draft permit. The DFG comment letter does not provide rationale of why the addition of the proposed place of use and offstream reservoir “E” covered under this proposed water right will change the current invasive species conditions encountered at the other ponds on the property, including Reservoir “B”. Without a strong nexus, there does not appear to be support to require a term language in this permit to cover reservoirs diverting under a separate water right or non-jurisdictional in nature. Division staff does recognize however that the proposed reservoir “E” has a strong likelihood of being colonized by bullfrogs.

¹ University of California Cooperative Extension. 2012. Sample Costs to Establish a Vineyard and Produce Wine Grapes. North Coast Region Napa County. <http://coststudies.ucdavis.edu/files/WinegrapeNC2012.pdf>

University of California Cooperative Extension. 2010. Sample Costs to Establish a Vineyard and Produce Wine Grapes. North Coast Region Sonoma County. <http://coststudies.ucdavis.edu/files/grapewinesonoma2010.pdf>

² Bulger, J.B., N.J. Scott Jr. and R.B. Seymour. 2003. Terrestrial activity and conservation of adult California red-legged frogs *Rana aurora draytonii* in coastal forests and grasslands. *Biological Conservation* 110:85-95.

In response to the requested permit term, Division staff modified the existing draft permit term 0400205 part (e), which stated "Consult with the United States Fish and Wildlife Service and California Department of Fish and Game should any bullfrogs or non-native fish be discovered at or near the reservoir to develop and implement an acceptable bullfrog eradication program. The eradication program may require periodic draining of the reservoir" to the following revised language, relevant to the place of storage (proposed reservoir) covered by Application 31021:

Permittee will manage the reservoir in such a way as to prevent occupation by non-native bullfrogs. Prior to construction, an invasive species management plan shall be developed in consultation with the United States Fish and Wildlife Service and the Department of Fish and Game.

The Division has proposed a number of mitigation measures that would help to reduce or eliminate the potential direct and indirect impacts that may result from the project. As lead agency it is also adopting a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to mitigate or avoid significant environmental effects. In light of the whole record there is no substantial evidence that the project, as revised may have a significant effect on the environment.

If you have any questions, please contact Antonio Barrales at (916) 341-5398 or by email at abarrales@waterboards.ca.gov. Written correspondences or inquiries should be addressed as follows: State Water Resources Control Board, Division of Water Rights, Attn: Antonio Barrales, P.O. Box 2000, Sacramento, CA. 95812-2000.

Sincerely,

ORIGINAL SIGNED BY:

Amanda Montgomery, Senior
Napa River Watershed Unit
Division of Water Rights

cc: U.S. Fish and Wildlife Service
c/o Ryan Olah
Endangered Species Division
2800 Cottage Way
Sacramento, CA 95825