

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2026-0003

In the Matter of Water Right Application A032424

Flocchini Estate, LLC

SOURCE: Unnamed Stream tributary to an Unnamed Drainage Ditch thence the Petaluma River thence San Pablo Bay

COUNTY: Sonoma

**ORDER GRANTING REQUEST FOR A CASE-BY-CASE EXCEPTION AND
ACCEPTING AN APPLICATION**

BY THE BOARD:

1.0 INTRODUCTION

This matter comes before the State Water Resources Control Board (State Water Board or Board) pursuant to a water right application and a request for a case-by-case exception to the Policy for Maintaining Instream Flows in Northern California Coastal Streams (North Coast Instream Flow Policy or Policy) filed by Flocchini Estate, LLC (Applicant). Application A032424 seeks approval to divert water to storage in a reservoir formed by an existing onstream dam located on an Unnamed Stream tributary to an Unnamed Drainage Ditch thence the Petaluma River thence San Pablo Bay thence the Pacific Ocean in Sonoma County.

Due to the onstream dam, the Policy prohibits the Board from accepting this application for processing without granting a case-by-case exception request. The State Water Board's Division of Water Rights (Division) has assessed the Applicant's exception request, and the Deputy Director for the Division recommends that the Board approve the exception request for the reasons set forth below. In this order, the State Water Board grants the exception request subject to the conditions at the end of this order,

including a condition reducing the season of diversion under application A032424, and accepts application A032424 subject to these conditions.

2.0 PROCEDURAL BACKGROUND

Division staff inspected the dam and reservoir on the Applicant's property on February 7, 2011. Following the inspection, the State Water Board concluded that surface water was being diverted to storage without a basis of right and notified the Applicant of this conclusion and potential civil liability. By letter dated September 20, 2011, the Division directed the Applicant to provide evidence demonstrating the reservoir was not subject to the State Water Board's permitting authority, remove the reservoir or render it incapable of storing water, or file an application with the State Water Board seeking permission to appropriate water. This letter further directed the Applicant to file an Initial Statement of Water Diversion and Use (Initial Statement) pursuant to Water Code section 5100 et seq. The letter gave the Applicant 45 days to respond indicating the intended course of action with an implementation plan and schedule. The Applicant filed an Initial Statement on September 29, 2011, claiming water was diverted pursuant to a pending appropriative right application despite one not yet being filed.

On March 8, 2013, only the requirement to submit an Initial Statement had been complied with. Therefore, the Division's Prosecution Team issued an Administrative Civil Liability Complaint and a draft Cease and Desist Order against the Applicant, alleging that water was unlawfully diverted to storage into the reservoir. On April 3, 2013, the Applicant timely requested a hearing on the Administrative Civil Liability Complaint and Draft Cease and Desist Order.

The Applicant filed water right application A032424 with the Division on May 15, 2015. Shortly thereafter, on May 28, 2015, the Applicant and the Division's Prosecution Team executed a settlement agreement. The settlement agreement requires, in part, that the Applicant diligently pursue securing the water right permit sought in Application A032424. On July 16, 2015, the Board's Executive Director issued State Water Board [Order WR 2015-0023-EXEC](#) approving the settlement agreement which provided the terms for a Cease and Desist Order.

3.0 WATER RIGHT APPLICATION

Application A032424 requests a permit to divert up to 22.3 acre-feet per year of water to storage from an Unnamed Stream in Sonoma County in the Petaluma River stream system. The proposed point of diversion and storage location are the existing onstream dam and reservoir with an estimated capacity of 22.3 acre-feet. Stored water would be used for the purposes of irrigation of a 29-acre place of use and incidental recreation. The application requests a season of diversion from November 1 through May 31 of the following year.

4.0 NORTH COAST INSTREAM FLOW POLICY

The North Coast Instream Flow Policy became effective on February 4, 2014, and establishes principles and guidelines for maintaining instream flows for the protection of fishery resources, while minimizing water supply impacts on other beneficial uses, including irrigation, municipal use, and domestic use. The geographic scope of the Policy encompasses coastal streams from the Mattole River to San Francisco as well as coastal streams entering northern San Pablo Bay and extends to five counties: Marin, Sonoma, and portions of Napa, Mendocino, and Humboldt counties.

As application A032424 proposes to divert water from a source tributary to the Petaluma River in Sonoma County, it is within the geographic area of the Policy and is subject to the Policy's provisions.

The primary objective of the Policy is to ensure that the State Water Board administers water rights in a manner that maintains instream flows needed for the protection of fishery resources with a particular focus on anadromous salmonids and their habitat. It prescribes protective measures regarding the season of diversion, minimum bypass flow, and maximum cumulative diversion. The Policy also contains measures to restrict approval of onstream dams to avoid adverse effects on instream flows needed for fishery resources.

An onstream dam is defined in Policy section 2.4 as "a structure in a stream channel that impedes or blocks the passage of water, sediment, woody debris, or fish." Onstream dams can impact salmonids by (1) preventing fish passage and blocking

access to upstream spawning and rearing habitat; (2) intercepting and retaining spring and summer flows without providing continuous flow releases below the onstream dam (i.e., bypass flows); (3) intercepting and retaining sediments/gravels that would otherwise replenish downstream spawning gravels; (4) intercepting and retaining large wood that would otherwise provide downstream habitat structure; (5) causing loss of riparian habitat or wetlands and (6) creating slow-moving, lentic (lake-like) habitats that favor non-native species that may prey on anadromous salmonids or compete for food and shelter.

The Policy contains requirements for the permitting of onstream dams to address the adverse effects that onstream dams have on fish and their habitat. These requirements are specific to the stream classification where the onstream dam is located. Among these requirements, Policy section 2.4 generally prohibits the acceptance of new applications to divert water by means of an onstream dam on a Class 1 or Class 2 stream. Class 1 streams are characterized by the presence of fish seasonally or year-round. Class 2 streams are characterized by the presence of seasonal or year-round habitat for aquatic non-fish vertebrates and/or aquatic benthic macroinvertebrates. The reach upstream of the Applicant's reservoir is a Class 2 stream, and the reach downstream of the Applicant's reservoir is a non-anadromous Class 1 stream.¹ Therefore, application A032424 is subject to this Policy section 2.4 prohibition.

The Policy also contains a provision that allows applicants to request a case-by-case exception to any Policy provision. Section 9.0 of the Policy provides that the Board may grant a case-by-case exception request where it determines that: (1) the exception will not compromise maintenance of instream flows in the Policy area; and (2) the public interest will be served. A request for a case-by-case exception must include the following: (1) a detailed description of the reason for the request; (2) the Policy provisions that are involved; (3) documentation of the reasons why the exception will not compromise maintenance of instream flows in the Policy area; and (4) an explanation of how the public interest will be served by the exception. The Board's consideration of a

¹ State Water Resources Control Board, Division of Water Rights. Initial Stream Classification Recommendation for Application A032424 of Flocchini Estate, LLC, Sonoma County. July 18, 2023.

case-by-case exception request is limited to the Policy provisions stated in the case-by-case exception request. The Policy places the burden on applicants to provide sufficient information for the Board to make the required findings and grant an exception request.

In accordance with State Water Board [Order WR 2012-0011-EXEC](#),² Division staff informed the Applicant by letter dated January 22, 2016, that application A032424 would be rejected due to the Policy's prohibition on acceptance of new applications for onstream dams in Policy section 2.4, unless the Applicant submitted a request for case-by-case exception to this Policy prohibition. On February 12, 2016, the Applicant filed a request for a case-by-case exception to the prohibition in Policy section 2.4.

4.1 Case-by-Case Exception Request: Maintenance of Instream Flows

The Applicant's exception request asserts that granting the exception will not compromise the maintenance of instream flows, citing materials prepared by the Applicant's consultants including a 2015 stream classification report, documentation identifying the upstream limit of anadromy, and a 2015 cumulative diversion analysis (CDA). The exception request states that the application will not compromise maintenance of instream flows for the following reasons:

- The reservoir is located approximately 2,800 feet upstream of a tidally influenced ditch tributary to the Petaluma River. The upper limit of anadromy, which the Policy defines as the upstream end of the range of anadromous fish that currently are, or have been historically, present year-round or seasonally, whichever extends the farthest upstream, is located at the confluence of the Unnamed Drainage Ditch and the Petaluma River.
- An existing onstream pond directly upstream of the subject reservoir blocks movement of materials from the upstream watershed.

The State Water Board has evaluated the exception request with respect to the maintenance of instream flows. The following sections discuss the Board's evaluation of

² Order WR 2012-0011-EXEC provides that when applications are subject to rejection due to the prohibition in Policy section 2.4, applicants should be afforded the opportunity to either contest the stream classification or request a case-by-case exception.

the maintenance of instream flows, organized by the list of potential impacts to salmonids contained in section 4.0 of this order. As discussed below, the onstream dam and reservoir in application A032424 as currently proposed have the potential to cause all six of the adverse impacts to salmonids. However, if the Applicant's project is conditioned to comply with the Policy's regionally protective criteria (including the season of diversion, minimum bypass flow, and maximum cumulative diversion), and to comply with the Policy's requirements for a bypass system consistent with Policy section 5.0 and Appendix E and mitigation plans consistent with Policy Appendix D, it will not compromise maintenance of instream flows.³

4.1.1 Preventing Fish Passage and Blocking Access to Upstream Spawning and Rearing Habitat

The Applicant's onstream dam is located approximately 1.24 miles upstream of the upper limit of anadromy. On July 18, 2023, Division staff completed an Initial Stream Class Determination which identifies the upper limit of anadromy at the confluence of the Unnamed Drainage Ditch and the Petaluma River. The Initial Stream Class Determination identifies the Unnamed Stream below the point of diversion (approximately 2,250 feet in length) and the Unnamed Drainage Ditch connecting the Unnamed Stream to the Petaluma River (approximately 3,500 feet in length) as Class 1 watercourses, but notes that these reaches are unlikely to provide habitat for anadromous salmonids and are upstream of the upper limit of anadromy. The Initial Stream Class Determination was accepted by the Applicant on September 25, 2023. The California Department of Fish and Wildlife (CDFW) submitted comments on the exception request on September 12, 2024, agreeing with the location of the upper limit of anadromy. Given the absence of anadromy upstream of the confluence of the Unnamed Drainage Ditch and the Petaluma River, the Applicant's onstream dam will not prevent anadromous fish passage at the point of diversion.

³ As the regionally protective criteria are necessarily conservative and err on the side of resource protection, the Division recommends applicants requesting case-by-case exceptions design their projects according to these criteria to allow for faster processing and assurance of maintenance of instream flows.

The Policy defines regionally protective criteria for season of diversion, minimum bypass flow, and maximum cumulative diversion for the protection of fishery resources. These criteria are defined to cover the diverse Policy area and are by necessity conservative and err on the side of resource protection. If an applicant wishes to define more precise, site-specific criteria, they can complete a site-specific study pursuant to Policy Appendix C. Applicants then evaluate these regional or site-specific criteria in a CDA to demonstrate the maintenance of instream flows.

The exception request references a 2015 CDA prepared by the Applicant's consultant. In the 2015 CDA, the Applicant asserts that since the fish-accessible reaches downstream of the dam are not freshwater, the regionally protective criteria of the Policy are not necessarily appropriate for application A032424.⁴ However, the fish-accessible reaches below the dam being brackish water does not negate the importance of freshwater flows for fish downstream. CDFW's comments note that there is habitat for green sturgeon - southern Distinct Population Segment (sDPS, *Acipenser medirostris* pop. 1) downstream and that the National Marine Fisheries Service has stated that sufficient flow into the San Pablo Bay and estuary to allow adults to successfully orient to the incoming flow and migrate upstream to spawning grounds is an essential feature of critical habitat for the sDPS.⁵

The 2015 CDA uses the regionally protective criteria for minimum bypass flow and maximum cumulative diversion, but applies a more expansive season of diversion without a corresponding site-specific study.⁶ For the purpose of determining whether application A032424 can be granted an exception from the prohibition in Policy section 2.4, the Board finds that the 2015 CDA demonstrates the Applicant's project can

⁴ Wagner and Bonsignore, CCE. State Water Board Order WR 2015-0023-EXEC, Diversion Analysis Study – Application 32424 of Flocchini Estate, LLC, Sonoma County. October 5, 2015.

⁵ The sDPS of North American Green Sturgeon has been listed as threatened under the federal Endangered Species Act and is a California Species of Special Concern.

⁶ Absent supporting site-specific studies, the regionally protective criteria must be applied in concert to ensure the maintenance of instream flows for fishery resources (North Coast Instream Flow Policy: Scientific Basis and Development of Alternatives Protecting Anadromous Salmonids, 2008).

be implemented such that instream flows are maintained during the regionally protective season of December 15 to March 31 if diversions occur only when flows surpass the regionally protective minimum bypass flow requirement.⁷ Therefore, this order conditions its approval of the exception request by limiting the season of diversion to the regionally protective season and by limiting diversions to times during which flows surpass the regionally protective minimum bypass flow requirement. The Board notes, however, that a formal determination of water availability pursuant to Water Code section 1375 and Policy section 2.3 will occur after application acceptance.

4.1.2 Intercepting and Retaining Spring and Summer Flows

Application A032424 requests a diversion season of November 1 through May 31, thereby creating the potential to intercept and retain spring flows. As explained above, the 2015 CDA demonstrates that application A032424 can be implemented without compromising the maintenance of instream flows during the regionally protective diversion season if operated with a regionally protective minimum bypass flow requirement. However, there is no clear, site-specific information that instream flows would be maintained outside of the regionally protective diversion season. Therefore, this order conditions its approval of the exception request by limiting the season of diversion to the regionally protective season and by limiting diversions to times during which flows surpass the regionally protective minimum bypass flow requirement.

4.1.3 Intercepting and Retaining Sediments/Gravels and Large Wood

The exception request states the drainage area above the point of diversion is 415 acres without providing further geologic or soil analysis. A drainage area of this size yields the potential for gravel and sediment production, which would then be captured by the onstream reservoir. Similarly, the site photographs in attachment 5 to application A032424 depict the presence of riparian vegetation upstream of the point of diversion that could produce large woody debris that would then be captured by the reservoir. While there is potential for the Applicant's onstream dam and reservoir to retain

⁷ In its comments on the exception request, CDFW states it would only find the onstream dam protective if the diversion season was reduced to the regionally protective season of December 15 to March 31.

sediment/gravel and large woody debris, there is no anadromy upstream of the confluence of the Unnamed Drainage Ditch and the Petaluma River to take advantage of any potential spawning and rearing habitat. A separate, onstream dam (registration D032167) also sits directly upstream of the Applicant's reservoir, which could also capture gravel and large woody debris.

The exception request argues the Applicant's dam does not block movement of materials from the upper watershed because of the upstream onstream dam. The presence of an upstream onstream dam and reservoir under a different basis of right does not change the requirements of the Policy nor does it eliminate the need to consider impacts of the reservoir requested under application A032424. The Board, in its review and consideration of the application after acceptance, may determine that gravel and wood augmentation plans are not necessary.

This order conditions its approval of the exception request by requiring the Applicant to develop and implement gravel and wood augmentation plan(s) or submit detailed information showing why such plan(s) are ecologically unnecessary, after which the Board may waive this requirement, consistent with Policy Appendix D. The Board's review and approval of mitigation plan(s) or waiver of this requirement is necessary to ensure that the requested exception will not compromise maintenance of instream flows in the Policy area.

4.1.4 Causing Loss of Riparian Habitat or Wetlands

The exception request does not address the onstream dam's potential to cause loss of riparian habitat or wetlands. The site photos in attachment 5 to application A032424 depict riparian habitat in the project area. As with wood and gravel mitigation, the default in Appendix D of the Policy is that the Applicant shall prepare a riparian habitat replacement plan unless the Board determines a mitigation plan is unnecessary. This order conditions its approval of the exception request by requiring the Applicant to develop and implement this mitigation plan or submit detailed information showing why the plan is ecologically unnecessary after which the Board may waive this requirement, consistent with Policy Appendix D. The Board's review and approval of this mitigation

plan or waiver of this requirement is necessary to ensure that the requested exception will not compromise maintenance of instream flows in the Policy area.

4.1.5 Creating Slow-Moving, Lentic Habitats

The exception request does not address the potential impacts associated with the onstream dam creating slow-moving, lentic habitats that favor non-natives species. Native species, including special status species, could be impacted by non-native predators. As with wood and gravel mitigation and riparian habitat replacement, the default in Appendix D of the Policy is that the Applicant shall prepare a non-native species eradication plan unless the Board determines a mitigation plan is unnecessary. This order conditions its approval of the exception request by requiring the Applicant to develop and implement this mitigation plan or submit detailed information showing why the plan is ecologically unnecessary after which the Board may waive this requirement, consistent with Policy Appendix D. The Board's review and approval of this mitigation plan or waiver of this requirement is necessary to ensure that the requested exception will not compromise maintenance of instream flows in the Policy area.

4.2 Case-by-Case Exception Request: Public Interest

The exception request asserts that granting the exception is in the public interest. In support of this assertion, the exception request claims that the onstream reservoir is the sole source of water for irrigation and that there are no alternative sources. The exception request also claims that decommissioning the reservoir would result in the elimination of up to 29 jobs, a reduction in property taxes paid to Sonoma County, and a loss of seasonal habitat for birds and other wildlife.

The State Water Board has evaluated the Applicant's exception request with respect to the public interest. As noted in Policy section 2.1, the protection of fishery resources is in the public interest. If application A032424 is conditioned to be limited to the Policy's regionally protective criteria (including the season of diversion, minimum bypass flow, and maximum cumulative diversion), and to comply with the Policy's requirements for a bypass system consistent with Policy section 5.0 and Appendix E and mitigation plans consistent with Policy Appendix D, then it will not compromise the maintenance of instream flows needed for anadromous fish. Furthermore, the Applicant's dam is located

over a mile upstream of the upper limit of anadromy and the Initial Stream Class Determination notes warm water temperatures, high salinity levels, and an overall lack of suitable salmonid habitat in the Unnamed Stream and Unnamed Drainage Ditch downstream of the reservoir. The dam's distance from anadromy and the lack of suitable habitat downstream, combined with the results of the 2015 CDA during the regionally protective season of diversion, further clarify that application A032424 as conditioned below poses minimal harm to the public interest with respect to fishery resources.

The Legislature has recognized that preserving agricultural land and protecting it from development is in the public interest through acts such as the Williamson Act (the California Land Conservation Act of 1965, Gov. Code, § 51200 et seq.)⁸ and the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Gov. Code, § 56000 et seq.). Although groundwater may be available to the Applicant, removing the reservoir could nevertheless render farming economically infeasible on the property and potentially encourage future development. Furthermore, application A032424 and the exception request state that the Flocchini family has been farming the property since at least the early 1950's. Given the inherent value of the agricultural land described in application A032424 and the project's minimized harm to fishery resources as conditioned by this order, the Board finds that accepting the application is in the public interest.

5.0 CONCLUSION

This order is limited to the matter of whether to grant an exception request to the prohibition against accepting applications as specified in Policy section 2.4.⁹ The accepted application will be subject to all other applicable provisions of the Policy.

Once an application is accepted, the State Water Board must fulfill its obligations under

⁸ According to the most recent data on the websites of the California Department of Conservation and Sonoma County, Sonoma County Assessor's Parcel Number 068-110-007, which contains the place of use specified in application A032424, is enrolled in a Williamson Act contract.

⁹ An exception to a specific Policy provision does not constitute an exception to any other Policy provisions.

the California Environmental Quality Act (CEQA) prior to any potential approval of the proposed project. (Pub. Resources Code, § 21000 et seq.) In addition to fulfilling its CEQA responsibilities, the State Water Board must comply with its obligations under the Water Code, the California Code of Regulations, the public trust doctrine, and all Board policies applicable in the context of processing the water right application. After acceptance of the application, as part of the Board’s public notice process, Division staff will conduct tribal outreach in accordance with the State Water Board’s Tribal Consultation Policy and the California Environmental Protection Agency Tribal Consultation Protocol.

After reviewing the exception request, together with the results of the 2015 CDA and comments from CDFW, and recognizing the absence of anadromy upstream of the confluence of the Unnamed Drainage Ditch and the Petaluma River, the Board considered whether and how, with additional conditions, application A032424 could receive an exception from the Policy’s prohibition on accepting applications with onstream dams on Class 1 and 2 streams. For the reasons discussed in sections 4.1 and 4.2 above, the Board finds that if acceptance of application A032424 is conditioned to reduce the season of diversion to the regionally protective season of December 15 through March 31 and is conditioned to be limited to the rest of the Policy’s regionally protective criteria (minimum bypass flow and maximum cumulative diversion), to comply with the Policy’s requirements for a bypass system consistent with Policy section 5.0 and Appendix E and mitigation plans consistent with Policy Appendix D, granting the exception request and accepting the application will not compromise the maintenance of instream flows and will serve the public interest.

The Applicant’s onstream dam is currently in place and the associated potential impacts described in section 4.1 of this order may be ongoing. Given the risk of harm in a sensitive area, the Board finds it is appropriate to impose requirements for the timely completion of deliverables identified in the order section below. The Board considered the prioritization criteria for enforcement in section 8 and Appendix G of the Policy to assess the risk to instream flows in deciding to impose these timelines. Under those criteria, the onstream dam implicates potential violations within Class 1 and 2 streams and potential injury to endangered species (prioritization criteria 1 and 3 respectively).

Therefore, imposing the timelines specified in the Order section below will ensure diligent pursuit of the deliverables described in section 4.1 and minimize harm to instream flows needed for fishery resources.

If the Applicant fails to comply with the conditions specified below within the required time periods, application A032424 is subject to cancellation.

This order does not modify or suspend State Water Board Order WR 2015-0023-EXEC or the settlement agreement it approved. The Applicant remains responsible for timely and full compliance with all requirements of State Water Board Order WR 2015-0023-EXEC and the settlement agreement.

ORDER

IT IS HEREBY ORDERED THAT:

The case-by-case exception request that would allow Flocchini Estate, LLC to proceed with an application for a permit is granted, and application A032424, as conditioned by the terms below, is accepted.

1. Acceptance of application A032424 is conditioned to reduce the season of diversion to the regionally protective season under Policy section 2.2.1.1 of December 15 through March 31 of the succeeding year. If a permit is issued pursuant to application A032424, the permit shall not include a season of diversion that extends outside the regionally protective season of diversion.
2. Within 60 days of Division selection of Points of Interest (section A.1.7 of the Policy), the Applicant shall prepare a cumulative diversion analysis that meets the conditions of Policy section A.1.8 using the regionally protective criteria for diversion season, minimum bypass flow, and maximum cumulative diversion identified in Policy section 2.2.1 at the Points of Interest. After Division acceptance of a passing cumulative diversion analysis, any permit issued pursuant to application A032424 shall include the calculated minimum bypass flow as a condition.

3. Within 60 days of Division acceptance of a passing cumulative diversion analysis, the Applicant shall submit plans for a bypass system consistent with requirements identified in Policy section 5.0 and Appendix E.
4. The Applicant shall develop and implement mitigation plans for (a) gravel and wood augmentation, (b) riparian habitat replacement, and (c) non-native species eradication in accordance with Policy section 7.0 and Appendix D or detailed information showing plans are ecologically unnecessary. Within 60 days of the date of this order, the Applicant shall submit a request for approval of qualified individual(s) to develop such plans or submit detailed information showing plans are ecologically unnecessary. The Applicant shall submit any plans prepared by approved qualified individual(s) within 120 days of Division approval of qualified individual(s).

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on February 3, 2026.

AYE: Chair E. Joaquin Esquivel
 Vice Chair Dorene D'Adamo
 Board Member Sean Maguire
 Board Member Laurel Firestone
 Board Member Nichole Morgan

NAY: None

ABSENT: None

ABSTAIN: None

Courtney Tyler
Courtney Tyler
Clerk to the Board