



State Water Resources Control Board

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: Petition to Change Water Right Licenses 6556 and 10827 of Lucky Star Investment Group, LLC

APPLICANT: Lucky Star Investment Group, LLC
c/o John Dvorsky
1020 SW Taylor, Suite 610
Portland, OR 97205

PROJECT LOCATION:

The proposed project is located in San Mateo County, immediately adjacent to the incorporated City of Half Moon Bay. This location can be found within the southwest quarter of Section 17, Township 5 south, Range 5 west of the Mount Diablo Base and Meridian, on the "Half Moon Bay" U.S. Geological Survey (USGS) 7.5-minutes topographic quadrangle.

PROJECT DESCRIPTION:

This project consists of replacing a previous water diversion intake system that was located approximately 30 feet downstream of the proposed intake on Frenchmans Creek. The proposed intake intends to provide a more reliable diversion system that requires less frequent maintenance and thus less overall disturbance to the creek.

DETERMINATION:

The State Water Resources Control Board (State Water 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.

WATER RIGHT TERMS:

Mitigation measures have been incorporated into the project to avoid potential significant environmental impacts. Specific terms reflecting the mitigation measures, written substantially

as follows, will be included in any licenses or orders issued by the State Water Board:

1. *No water shall be diverted to offstream storage under this license unless Licensee is monitoring and reporting the diversion of water. This monitoring shall be conducted using a device and methods satisfactory to the Deputy Director for Water Rights. The device shall be capable of monitoring the rate and quantity of water diverted and shall be properly maintained.*

Licensee shall provide the Division of Water Rights with evidence that the device has been installed with the first annual report submitted after device installation. Licensee shall provide the Division of Water Rights with evidence that substantiates that the device is 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.

Licensee shall maintain a record of all diversions under this license that includes the date, time, rate of diversion, and the amount of water diverted. The records shall be submitted with the annual report or whenever requested by the Division of Water Rights.

2. *No water shall be diverted under this license unless the flow in Frenchmans Creek is at or above 2.8 cubic feet per second, as measured at the Point of Diversion.*
3. *No water shall be diverted under this license unless Licensee has installed a device, satisfactory to the Deputy Director for Water Rights, which is capable of measuring the flows required by the conditions of this license. The measuring device shall be properly maintained.*
4. *No water shall be diverted under this license unless Licensee is monitoring the bypass flow required by this license in accordance with a compliance plan, satisfactory to the Deputy Director for Water Rights. Licensee shall submit a report on bypass flow compliance activities in accordance with the schedule contained in the compliance plan.*
5. *No water shall be diverted under this license, and no construction related to such diversion shall commence, unless Licensee complies with the requirements of the Clean Water Act. In order to demonstrate such compliance, Licensee shall obtain a Clean Water Act section 404 permit from the U.S. Army Corps of Engineers, or evidence that such a permit is not required, and provide such permit or evidence to the Division of Water Rights. If it is determined that a Clean Water Act section 404 permit is required, Licensee shall further demonstrate compliance by obtaining a Clean Water Act section 401 certification from the State Water Board.*
6. *Licensee shall obtain all necessary state and local agency permits required by other agencies prior to diversion, storage, or use of water under this license. Copies of these permit and approvals shall be forward to the Deputy Director for Water Rights.*
7. *For the protection of habitat for the Red-legged frog (*Rana aurora draytoni*) and the endangered San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) and to allow for the growth of riparian vegetation, the Licensee shall:*
 - A. *Establish and maintain an undisturbed 100-foot-wide strip of natural upland vegetation around the water storage reservoir. Establish and maintain, undisturbed, a 100-foot wide strip of natural upland vegetation around the water*

storage reservoir. Except for the exclusions stated herein, no ground disturbing activities shall occur within the 100-foot wide strip of upland vegetation, including, but not limited to, grading, herbicide spraying, roads, fencing, and use or construction of storage areas. There is excluded from the 100-foot wide strip of upland vegetation established herein all existing planted landscape areas, roads and roadways, bridges, equipment and material storage areas, buildings, structures, fences, wells, pipes, drainage facilities, utility lines and poles, pumps, sumps, water diversion and storage facilities, and access to all of the foregoing existing features for purposes of operation, maintenance and replacement, as such facilities and access exists now or may from time to time be modified. Equipment access through the 100-foot wide strip of upland vegetation shall incorporate best management practices to minimize disturbance to water, soils, and vegetation. Planting and irrigation of native riparian vegetation within the 100-foot wide strip of upland vegetation are allowed;

- B. Obtain approval of the U.S. Fish and Wildlife Service, Sacramento Endangered Species Office, and the State Department of Fish and Game prior to any reservoir dredging operations.*
- C. Refrain from disturbing the fringe of emergent (wetland) vegetation in the reservoir during dredging operations.*
- D. Restrict cattle and domestic stock access to the reservoir to a maximum of 10 percent of the shoreline or construct outlet pipes to watering troughs.*

These requirements shall remain in effect as long as water is being diverted by the Licensee (or successors-in-interest) under this license.

- 8. For undeveloped portions of the place of use along and adjacent to Frenchmans Creek, Licensee shall establish a setback for the protection of the riparian corridor along Frenchmans Creek. The setback shall be measured from the Watercourse Transition Line as defined in the 2012 California Forest Practice Rules (Cal. Code Regs., tit. 14, § 895.1.) and shall extend a minimum of 25 feet or to the outer edge of the drip line of the existing riparian trees, whichever is greater. Prior to ground disturbing activities adjacent to setback areas, Licensee shall stake the proposed setback and notify the Department of Fish and Game. Except for the exclusions stated herein, no ground disturbing activities shall occur within the setback area, including, but not limited to, grading, herbicide spraying, roads, fencing, and use or construction of storage areas. There is excluded from the setback areas established herein all existing orchards and planted landscape areas, roads and roadways, bridges, equipment and material storage areas, buildings, structures, fences, wells, pipes, drainage facilities, utility lines and poles, pumps, sumps, water diversion and storage facilities, and access to all of the foregoing existing features for purposes of operation, maintenance and replacement, as such facilities and access exists now or may from time to time be modified. Equipment access through the setback area shall incorporate best management practices to minimize disturbance to water, soils, and vegetation. Planting and irrigation of native riparian vegetation within the setback area are allowed. Licensee shall restrict cattle or other domestic stock access to the riparian area. These requirements shall remain in effect as long as water is being diverted under this license.*
- 9. An erosion control/revegetation plan and implementation schedule shall be submitted to and approved by the Deputy Director for Water Rights, prior to starting construction. Before*

storing water in the reservoir, Licensee shall furnish evidence which substantiates that the erosion control/revegetation plan has been implemented. Evidence may include photographs showing the project area vegetation and slopes.

- 10. No debris, soil, silt, cement that has not set, oil, or other such foreign substance will be allowed to enter into or be placed where it may be washed by rainfall runoff into the waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area.*
- 11. This right is conditioned upon full compliance with the State Department of Fish and Game's criteria for fish screens. When replacement of the fish screen required by this term becomes necessary, the new screen shall comply with the current screening criteria established by the DFG. If the fish screen required by this term is rendered inoperative for any reason, the right holder shall notify the Deputy Director for Water Rights immediately and shall restore the fish screen to service as soon as possible.*
- 12. If construction or rehabilitation work is required for the diversion works covered by this license within the bed, channel, or bank of the affected water body, the Licensee shall enter into a streambed or lake alteration agreement with the Department of Fish and Game. Licensee shall submit a copy of the agreement, or waiver thereof, to the Division of Water Rights prior to commencement of work. Compliance with the terms and conditions of the agreement is the responsibility of the Licensee.*

Mitigation measures from a Streambed Alteration Agreement (SAA) with the Department of Fish and Game (DFG) have been incorporated into the project to avoid potential significant environmental impacts. Specific terms reflecting the mitigation measures, written substantially as follows, will be included in any SAA issued by DFG:

- 1. The diversion intake shall be fitted with screens meeting the size and flow criteria of the CDFG and NOAA as stated below (SAA measure 2.2):*
 - o Water velocity perpendicular to the screen shall not exceed 0.33 feet per second.*
 - o The screen mesh size shall be:*
 - Round openings - maximum 3/32 inch diameter (.09 inch)*
 - Square openings - maximum 3/32 inch diagonal (.09 inch)*
 - Slotted openings - maximum 1/16 inch width (.07 inch)*
 - o The screen face shall be kept in good condition and free of debris at all times that the diversion is operating.*
- 2. Intake screens shall not be installed until designs and plans for the construction and installation of the screens are submitted to and approved by the DFG. (SAA measure 2.3)*
- 3. The season of diversion shall be limited from January 1 to March 31 of each year. From April 1 to December 31, all water shall be allowed to pass the point of diversion. (SAA measure 2.4)*
- 4. No water shall be diverted until the measure of flow being bypassed around the existing POD is of sufficient quantity and quality to maintain in good condition any aquatic resources that would exist in downstream reaches under unimpaired flows. The minimum bypass flow shall be the estimated long-term unimpaired February median flow (FMF) at the POD. Prior to diversion of water, the estimated FMF shall be developed by the Applicant and approved*

by CDFG. The Applicant shall submit the proposed FMF including all calculations for review and acceptance at least 60 days prior to diversion. (SAA measure 2.6). Based on the hydrologic study, the bypass flow was determined to be 2.8 cfs.

5. *The intake shall be a passive or automated system that is designed to only divert flow when the FMF bypass is met. Outside the diversion season and at low flows, water will automatically bypass the site. (SAA measure 2.7) To achieve a passive bypass system the diversion structure will be fitted with a weir plate that restricts water to the diversion system until the bypass requirements have been met. Because the streambed is mobile, cross-section measurements and discharge estimates will be calculated annually to determine bed conditions and adjust the weir plate to the appropriate elevation. Mid-diversion season adjustments to the weir plate will be conducted as needed to ensure protection of the bypass.*
6. *The period for completing the intake structure shall be confined from June 15 to October 15 to avoid the migratory window of steelhead. (SAA measure 2.8)*
7. *Block nets will be placed at the upper and lower extent of the diversions to ensure that salmonids upstream and downstream do not enter the areas proposed for dewatering. Block nets will extend across the entire wetted channel. Block nets will not be removed until installation of all cofferdams, bypass pipes or channels, diversion dams or other facilities designed to dewater or divert flow are completed.*
8. *The work period for completing the work within the riparian zone shall be restricted to low or no stream flow and dry weather and shall be timed with awareness of precipitation forecasts. Construction activities within the stream zone shall be restricted to dry weather and shall cease until all reasonable erosion control measures, inside and outside of the stream zone have been implemented prior to all storm events. No work shall occur during wet weather. Wet weather is defined as when there has been ¼ inch of rain in a 24-hour period. In addition, no work will occur during a dry out period of 24 hours after the above referenced wet weather. (SAA measure 2.9)*
9. *Prior to construction activities, a qualified biological monitor shall clearly mark/flag or erect temporary construction fencing to designate the construction corridor and to delineate the areas that shall be avoided. The qualified biological monitor shall clearly mark/flag all trees within the designated construction corridor that shall be avoided. Flagging and or temporary construction fencing shall be removed immediately after the completion of construction work. (SAA measure 2.10)*
10. *The Applicant shall not remove vegetation on the banks of the creek from March 1 to August 15 to avoid impacts to nesting birds. However, the Applicant may remove vegetation by hand during this time if a qualified biologist conducts a survey for nesting birds within three days prior to the vegetation removal, and ensures no nesting birds shall be impacted by the project. These surveys shall include the areas within 200 feet of the edge of the proposed impact area(s). If active nests are found, a minimum 50-ft (200 feet for raptors) barrier or flagging shall be erected around the nest site. No habitat removal or any other work shall occur within this nest zone, even if the nest continues to be active beyond August 15, until the young have fledged, are no longer being fed by the parents, have left the nest, and will no longer be impacted by the project. Vegetation clearing may occur other than as described above if DFG-approved avoidance measures are in place to ensure no impacts to*

nesting birds may occur and the Applicant receives confirmation from the DFG that the vegetation removal at a specific site is allowed on a specified date. (SAA measure 2.11)

- 11. If mechanized equipment is used to remove or disturb vegetation, a biological monitor shall be onsite to observe. Vegetation outside the work area shall not be removed or damaged without prior approval of DFG. Where feasible, only hand tools shall be used to trim vegetation to the extent necessary to gain access to the site. (SAA measure 2.12)*
- 12. Prior to project activities, a focused survey for CRLF and SFGS following agency approved protocol shall be conducted. If either of these species is found in the area, DFG shall be notified immediately and all work shall cease until additional measures are developed by the appropriate agencies. (SAA measure 2.13)*
- 13. If SFGS are found to be in the Project area, all activities shall cease and Applicant shall notify DFG immediately to obtain avoidance measures to ensure protection of the SFGS. (SAA measure 2.14)*
- 14. In the event CRLF or SFGS are found in the project area, biological monitors will direct and inspect all vegetation, sediment and intake structure construction activities. All biological monitors for the project must be approved by the USFWS and the DFG prior to the commencement of work. (SAA measure 2.15)*
- 15. Exclusion fencing for CRLF and SFGS shall be installed around the work area and staging and stockpiled areas. After installation of the fence barrier, a biological monitor or qualified biologist shall inspect the project work area daily prior to commencement of construction activities. If the biological monitor or qualified biologist determines that sensitive species are not within the work area, equipment or materials may be moved onto the work site under the direct observation of the biological monitor or qualified biologist.*
- 16. If CRLF or SFGS are found in the project area, vegetation removed will be placed directly into a disposal vehicle and removed from the site. Vegetation will not be piled on the ground unless it is later transferred, piece by piece, under the direct supervision of the biological monitor or qualified biologist. (SAA measure 2.16)*
- 17. If CRLF or SFGS are found in the project area, any vehicle parked on site for more than 15 minutes shall be inspected by the biological monitor before it is moved to ensure that CRLF have not moved under the vehicle. Any parking areas must be checked in advance by the biological monitor or qualified biologist. (SAA measure 2.17)*
- 18. If CRLF enters the work area, all work shall stop until the qualified biologist relocates the animal or it leaves on its own. Only the qualified biologist can handle and relocate CRLF. Any sightings and/or injuries of this species shall be immediately reported to the DFG per instructions below. (SAA measure 2.18)*
- 19. If SFGS are found in the project area, they are not to be handled. SFGS is protected under FGC Section 5050. Under this statute, take of a fully protected species may not occur except for scientific or recovery purposes. Catch, pursue, capture or attempt to catch, pursue and capture is considered take as defined in Section 86 of the Fish and Game Code. Because of this, any SFGS encountered on the work area must be left alone until it leaves the area on its own. (SAA measure 2.19)*

20. *No equipment shall be operated in a flowing stream at any time except as may be necessary to construct the dewatering system or divert water flow around the work site. (SAA measure 2.20)*
21. *If work is to be conducted in Frenchmans Creek, the work area shall be isolated from the creek. To isolate the work area, water tight coffer dams shall be constructed upstream and downstream of the work area and water diverted through a suitably sized pipe, from upstream of the upstream coffer dam and discharged downstream of the downstream coffer dam. Cofferdams shall be constructed of a non-erodible material which does not contain soil or fine sediment. Cofferdams and the stream diversion system shall remain in place and functional throughout the construction period. If, the coffer dams or stream diversion fail, they shall be repaired immediately. (SAA measure 2.21)*
22. *The Applicant shall deploy silt curtains around the excavation and construction site to prevent heavily silted water from impacting areas around the site and spillway. The silt curtain shall be maintained throughout all phases of the excavation and construction activities. (SAA measure 2.22)*
23. *During dewatering of Frenchmans Creek, the decrease in water surface elevation (WSE) shall be controlled such that WSE does not change at a rate that increases turbidity to the creek that could be deleterious to aquatic life and the likelihood of stranding aquatic life up- and downstream of the creek. (SAA measure 2.23)*
24. *The Permittee shall deploy silt curtains around the construction site to prevent heavily silted water from impacting areas downstream from the project site. The silt curtain shall be maintained throughout all phases of the excavation activities. (SAA measure 2.24)*
25. *A biological monitor shall check daily for stranded aquatic life as the water level in the dewatering area drops. All reasonable efforts shall be made to capture and move all stranded aquatic life observed in the dewatered areas. Capture methods may include fish landing nets, dip nets, buckets and by hand. Captured aquatic life shall be released immediately in the closest body of water adjacent to the work site. This condition does not allow for the take or disturbance of any state or federally listed species. (SAA measure 2.25)*
26. *Erosion control measures shall be utilized throughout all phases of operation where sediment runoff from exposed slopes threatens to enter Waters of the State. This may require the construction of silt catch basins, silt fencing, certified weed free straw bale dikes, or other siltation barriers. At no time shall silt laden runoff be allowed to enter the stream or directed to where it may enter the stream. If any sediment barrier fails to retain sediment, corrective measures shall be employed. The sediment barrier(s) shall be maintained in good operating condition throughout the period of construction of the project. This includes but is not limited to, removal of accumulated silt and/or replacement of damaged bales and fabric fencing. (SAA measure 2.30)*
27. *Upon DFG determination that turbidity/siltation levels resulting from project related activities constitute a threat to aquatic life, activities associated with the turbidity/siltation shall be halted until effective CDFG approved control devices are installed or abatement procedures are initiated. CDFG may take enforcement action if appropriate turbidity and siltation control measures are not deployed. (SAA measure 2.31)*

Contact Person: Justine Herrig	Telephone: (916) 341-5759 Email: jmherrig@waterboards.ca.gov
--------------------------------	--

APPROVED:

ORIGINAL SIGNED BY
PHILLIP CRADER FOR:

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: NOV 28 2012