



State Water Resources Control Board

MITIGATED NEGATIVE DECLARATION
Pursuant to Section 21092
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: Water Right Application and Petitions for Edwards Ranch LLC

APPLICANT: Edwards Ranch, LLC
c/o Paul Van Leer, Ranch Manager
Las Varas Ranch
Route 1, Box 234 A
Goleta, CA 93117-9700
(805) 896-7623

PROJECT LOCATION:

The project is located within the Gato Creek watershed tributary to the Pacific Ocean near Highway 1 and Gato Canyon Road, eight miles northwest of Goleta in Santa Barbara County.

PROJECT DESCRIPTION:

Edwards Ranch, LLC has the following items pending before the State Water Resources Control Board (State Water Board), Division of Water Rights (Division):

- 1. Water Right Application 30289, filed on October 4, 1993, in order to obtain a new permit for direct diversion not to exceed 4.14 cubic feet per second (cfs) of water that is currently authorized for diversion to storage from the Gato Creek watershed under the terms of Permits 17360 and 17361;
2. Petition for Change for Water Right Permit 17360, filed on September 8, 1993, to reduce and modify the authorized place of use; and,
3. Petition for Extension of Time for Water Right Permits 17360 and 17361, filed on August 17, 2004, to extend the period of time within which to apply the water to full beneficial use.

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

DETERMINATION:

The State Water Board has determined that the above-proposed 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:

Application 30289:

1. The water appropriated shall be limited to the quantity which can be beneficially used for irrigation purposes, and shall not exceed 4.04 cubic feet per second by direct diversion from October 1 to December 31 of each year; 4.14 cubic feet per second by direct diversion from January 1 to March 31 of each year, and 4.04 cubic feet per second by direct diversion from April 1 to May 31 of each year. The maximum amount diverted under this permit shall not exceed 672 acre-feet per year for all uses.
2. The total quantity of water diverted under this permit and the permits pursuant to Applications 24985 and 25165 shall not exceed 704.3 acre-feet per year.
3. An erosion control/revegetation plan and implementation schedule, prepared by a licensed civil engineer, shall be submitted to and approved by the Deputy Director for Water Rights prior to cultivation of any uncultivated lands within the proposed place of use. Such plan shall be consistent with the requirements of Agricultural Waiver (Number AW1448), or successor waiver, issued to Permittee by the Central Coast Regional Water Quality Control Board. Before diverting water under this permit, Permittee shall furnish evidence which substantiates that the erosion control/revegetation plan has been implemented. Evidence includes photographs showing the project area and vegetation and slopes.

Permit 17360 (Application 24985):

4. No water shall be collected to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.
5. The capacity of the reservoir covered under this permit shall not exceed 644 acre-feet.
6. The total quantity of water diverted under this permit and the permits issued pursuant to Applications 25165 and 30289 shall not exceed 704.3 acre-feet per annum.
7. Permittee shall maintain the existing outlet pipe for Edwards Reservoir in proper working order.
8. The maximum rate of diversion to offstream storage shall not exceed 4.14 cubic feet per second.
9. No water shall be diverted to offstream storage under this permit unless Permittee is monitoring and reporting said 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.

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

Permittee shall maintain a record of all diversions under this permit 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.

10. No water shall be diverted under this permit unless Permittee is monitoring and reporting the water surface elevation in the reservoir. This monitoring shall be conducted using devices and methods satisfactory to the Deputy Director for Water Rights. The devices shall be capable of monitoring water surface elevations from the maximum water line to the minimum water line known to exist for the reservoir and shall be properly maintained.

Permittee shall provide the Division of Water Rights with evidence that the devices have been installed and the mark or reading corresponding to the maximum water line of the reservoir with the first annual report submitted after device installation. Permittee 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. Permittee shall maintain a record of water surface elevations. The records shall be submitted with the annual report or whenever requested by the Division of Water Rights. The State Water Board may require release of water held in storage that cannot be verified by monthly records. Failure to maintain or submit the required records may result in the requirement to release the entire content of the reservoir's storage.

11. No water shall be diverted under this permit unless Permittee is monitoring and reporting the withdrawal of water for beneficial use and the release of water from the reservoir. This monitoring shall be conducted using devices and methods satisfactory to the Deputy Director for Water Rights. The devices shall be capable of monitoring the rate and quantity of water withdrawn for beneficial use or released to the stream channel from each reservoir and shall be properly maintained.

Permittee shall provide the Division of Water Rights with evidence that the devices have been installed with the first annual report submitted after device installation. Permittee 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.

Permittee shall maintain a record of all withdrawals of water for beneficial use or releases of water to the stream channel under this permit that includes the date, time,

rate of withdrawal or release, and the amount of water withdrawn or released. The records shall be submitted with the annual report or whenever requested by the Division of Water Rights.

Permit 17361 (Application 25165):

12. The total quantity of water diverted under this permit and the permits issued pursuant to Applications 24985 and 30289 shall not exceed 704.3 acre-feet per annum.

Application 30289 and Permit 17361 (Application 25165):

13. No water shall be directly diverted under this permit unless Permittee 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 monitoring the rate and quantity of water diverted for domestic purposes and the daily amount of water diverted for stockwatering purposes and shall be properly maintained.

Permittee shall provide the Division of Water Rights with evidence that the devices have been installed with the first annual report submitted after device installation. Permittee 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.

Permittee shall maintain a record of all diversions under this permit 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.

Permit 17360 (Application 24985) and Permit 17361 (Application 25165):

14. An erosion control/revegetation plan and implementation schedule, prepared by a licensed civil engineer, shall be submitted to and approved by the Deputy Director for Water Rights prior to cultivation of any uncultivated lands within the proposed place of use. Such plan shall be consistent with the requirements of Agricultural Waiver (Number AW1448), or successor waiver, issued to Permittee by the Central Coast Regional Water Quality Control Board. Before diverting water in excess of the quantities diverted on or before December 31, 1995 under this permit, Permittee shall furnish evidence that substantiates that the erosion control/revegetation plan has been implemented. Evidence includes photographs showing the project area and vegetation and slopes.

Application 30289, Permit 17360 (Application 24985) and Permit 17361 (Application 25165):

15. This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531-1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain

authorization for an incidental take prior to construction or operation of the proposed project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the proposed project authorized under this permit.

16. No water shall be diverted from Gato Creek under this permit unless the flow in Gato Creek is at or above 0.111 cubic foot per second, as determined at Point of Diversion 2.
17. No water shall be diverted under this permit unless Permittee is recording the bypass flows required by this permit. This recording shall be conducted using devices, satisfactory to the Deputy Director for Water Rights. The devices shall be capable of recording the instantaneous rate of water bypassed and shall be properly maintained.

Permittee shall provide the Division of Water Rights with evidence that the devices have been installed with the first annual report submitted after device installation. Permittee 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. Evidence required by this condition shall include current photographs of the system in place and a statement, signed by the Permittee, certifying that the system is still operating as designed.

Permittee shall maintain a record of all bypassed flow under this permit that includes the date, time, and the rate of bypassed flow. The records shall be submitted with the annual report or whenever requested by the Division of Water Rights.

18. No water shall be diverted under this permit unless Permittee is monitoring the bypass flows required by this permit in accordance with a compliance plan, satisfactory to the Deputy Director for Water Rights. Permittee shall submit a report on bypass flow compliance activities in accordance with the schedule contained in the compliance plan.
19. 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.
20. 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 Deputy Director for 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 Deputy Director for 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 Deputy Director for Water Rights.

21. If human remains are encountered in the course of project development, including agricultural maintenance activities such as planting orchards, re-installing and/or relocating irrigation lines, etc., then the Permittee shall comply with section 15064.5 (e) (1) of the CEQA Guidelines and the Public Resources Code section 7050.5. All project-related ground disturbances 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 Public Resources Code section 15064.5 (e) has been completed and evidence has been submitted to the Deputy Director for Water Rights.
22. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2027.
23. For the protection of riparian wildlife habitat:
 - a) The minimum bypass flow requirement at Permittee's diversion point on Gato Creek shall be as follows:
 - i. During the period May 1 to October 31, Permittee shall bypass 50 gallons per minute (gpm), or the natural flow of Gato Creek, whichever is less.
 - ii. During the period November 1 to April 30, Permittee shall bypass 50 gpm on a monthly average basis, but never less than 25 gpm on an instantaneous basis, or the full natural flow of Gato Creek, whichever is less.
 - b) For the period May 1 to October 31, Permittee shall measure the monthly average bypass flow by use of a V-notch weir of the type and rating approved by the Department of Fish and Game.
 - c) For the period November 1 through April 30, Permittee shall compute the monthly average bypass flow by using the Gato Creek model, which is based on daily stream gage readings from nearby San Jose Creek.
 - d) Permittee shall measure the bypass flow at the Gato Creek diversion weekly, on the same day of the week, during the months of May through October, inclusive, so that any adjustments in releases made from the creek outlet downstream of the dam into the creek can be made.
 - e) Permittee shall measure the quantity of water passing through the dam, which runs into the unnamed tributary to Gato Creek (at the "creek release") on the same day of the release.

- f) On any measuring date during the months of May through October, inclusive, that the sum of the bypass flow at the Gato Creek diversion plus the flow at the creek release is less than 50 gpm, Permittee shall release into Gato Creek at the creek release the lesser of (a) the amount necessary to bring the total releases and bypasses to 50 gpm or (b) 25 gpm minus the measured flow passing through the dam.
 - g) In no year shall Permittee be required to release more water from the combination of the flows passing through the dam and the release of the creek release than Permittee stored in the reservoir during the immediate past storage season. If, in any year, Permittee believes that this provision will control releases, Permittee shall notify the Department of Fish and Game of that fact and shall work with the Department of Fish and Game to provide the required releases at such times and flow rates as may best protect riparian conditions below the creek release.
 - h) Permittee shall relocate the existing outlet from the delivery pipeline into Gato Creek (the creek release) to the following location: 34° 29.310' north latitude and -119° 58.600' west longitude. Permittee shall install a measuring device at the relocated creek release sufficient to measure the quantity of water released from the delivery pipeline into Gato Creek. Permittee shall consult with the Department of Fish and Game to determine whether a stream or lake alteration agreement will be required for relocation of the creek release.
 - i) Permittee shall install and maintain a pressure gauge at the outlet of the reservoir to measure changes in reservoir storage. The gauge shall be read periodically as required to provide information on total storage and water stored during the water year. The gauge shall be read whenever the Gato Creek diversion meter is read, so that diversions from the unnamed tributary can be calculated.
 - j) Permittee shall maintain an annual operating report that sets forth all weekly and other measurements made to comply with the terms and conditions of this permit. Permittee shall provide the Department of Fish and Game with a copy of the annual operating report annually. The annual operating report shall be maintained by the Permittee for ten years from the date of collection and made available for inspection by the Deputy Director for Water Rights or the Department of Fish and Game, upon request by either agency.
 - k) Upon receipt of reasonable written notice, Permittee shall provide DFG with access to Gato Creek diversion, the reservoir and outlet, and the creek release for purpose of monitoring compliance with the terms and conditions of this permit.
24. Permittee shall take the following actions to ensure that relocation of the creek release shall not harm California red-legged frog (*Rana aurora draytonii*), and any other sensitive species present at or near the existing and new creek release sites:
- a) Hire a qualified biologist, acceptable to the Department of Fish and Game and the U.S. Fish and Wildlife Service and the Division of Water Rights, to:

- i) Conduct a pre-construction biological survey of the designated creek release site and surrounding environs to determine if sensitive species and/or their habitats may be present; and,
 - ii) Conduct a training session for construction field crews to inform them of the possible presence of sensitive species, their appearance and explain actions to be taken if they are encountered during construction of the reservoir.
 - b) Stop all project-related construction activities if sensitive species are encountered and refrain from resuming construction activities until the biologist hired under part a) above declares that individual species encountered have either safely left the work area or have been safely removed and relocated by a qualified collection biologist duly certified by the Department of Fish and Game and the U.S. Fish and Wildlife Service.
25. For the protection of habitat for the California red-legged frog (*Rana aurora draytonii*), and other sensitive species occurring at or near the reservoir site, the Permittee shall:
- a) Establish and maintain, undisturbed, a 100-foot wide strip of natural upland vegetation around the reservoir, except at the dam and spillway and the existing unimproved access roads (+15 feet wide). The existing roads may be maintained as necessary to allow access to the dam site by a vehicle for normal operation and maintenance purposes. Any vehicle/mower following the path shall not exceed a speed limit of 2 miles per hour, and personnel shall be posted at all times in front of the moving vehicle/mower to ensure that any frogs encountered on the path will not be harmed;
 - b) With the exception of clearing vegetation from the dam and spillway as directed by the State Water Board and the Department of Water Resources Division of Safety of Dams, Permittee shall consult with the U.S. Fish and Wildlife Service, Sacramento Endangered Species Office, and the Department of Fish and Game prior to commencing any reservoir dredging operations;
 - c) Refrain from disturbing the fringe of emergent (wetland) vegetation in the reservoir during dredging operations;
 - d) Consult with the Department of Fish and Game, and/or the U.S. Fish and Wildlife Service, should any bullfrogs (*Rana catesbeiana*) be discovered at or near the reservoir, to develop and implement an acceptable bullfrog eradication program.
26. For the protection of riparian habitat and jurisdictional waters, Permittee shall establish a setback of 100 feet along Gato Creek and around the perimeter of all jurisdictional waters located within the designated place of use. This setback will also apply to any riparian areas or jurisdictional waters that may be discovered or formed on the property subsequent to the issuance of this permit. The stream setback shall be measured from the top of the bank, or the edge of the riparian corridor, whichever is more restrictive, on both sides of the stream or in the case of the jurisdictional waters, from the perimeter of the jurisdictional waters. No activity shall occur within the setback area, including, but

not limited to, grading, roads, fencing, storage areas, and irrigation, with the exception of access roads and the creek release facilities. Permittee shall use best management practices to limit access of cattle or other domestic stock to the riparian area as well as the jurisdictional waters. These requirements shall remain in effect as long as water is being diverted under any permit or license issued pursuant to this water right.

27. For the protection of the white-tailed Kite, Permittee shall establish a construction setback of 500 feet from any riparian areas; unless a nesting bird survey has been conducted by a qualified biologist and approved by the Department of Fish and Game, Division of Water Rights and the U.S. Fish and Wildlife Service, which indicates that no white-tailed Kites are using the riparian habitat for nesting during the time of construction. If, during the course of construction within the 500-foot setback, a white-tailed Kite is observed using the riparian habitat for nesting, all construction activities shall cease immediately until consultation with a qualified biologist and either the Department of Fish and Game or the U.S. Fish and Wildlife Service determine that it is safe to begin construction again.
28. The prehistoric site identified as CA-SBA-1564 by staff at Stone Archaeological Consulting in the report titled Phase 1 Archaeological Resources Preliminary Report For Proposed Waterlines at Las Varas Ranch Goleta, California, shall not be impacted by any developments related to the water diversion, storage, and distribution facilities associated with any orders, permits or licenses issued pursuant to Application 30289 and the Petition for Change of Permits 17360 and 17361. The orchard may continue to be cultivated with general maintenance activities. No ripping or grading shall be allowed on the area identified as an archaeological site. Techniques for removal of the orchard shall be restricted to minimal disturbance in the area of the site and shall be monitored by a qualified archeologist while the trees are removed. Due to the significance of CA-SBA-1564, a 100-foot buffer will be designated around this site, prohibiting the installation of irrigation lines or infrastructure. Any future activities associated with the water diversion, storage, and distribution facilities (i.e., irrigation system changes) at the location of CA-SBA-1564 may be permitted only if a qualified archeologist is retained by the landowner to design and undertake an appropriate mitigation plan, which must be approved by the Deputy Director for Water Rights prior to activities related to the new developments. Project related activities shall not resume within 100 feet of the cultural resource until all mitigation measures have been completed to the satisfaction of the Deputy Director for Water Rights.
29. The prehistoric site identified as CA-SBA-139 by staff at Macfarlane Archaeological Consultants in the report titled Phase 1 Cultural Resource Survey of a Portion of Las Varas Ranch Route 1, Box 234-A Santa Barbara, California, will not be impacted by the proposed project. No ripping or grading shall be allowed at CA-SBA-139 without a standard Phase 2 site evaluation and subsurface testing program first being performed to determine the importance of the site. Any proposed mitigation measures deemed necessary shall be submitted to the Deputy Director for Water Rights for approval. Project-related activities shall not resume within 100 feet of the resource until all approved mitigation measures have been completed to the satisfaction of the Deputy Director for Water Rights.

30. No water shall be diverted under this permit, and no construction related to such diversion shall commence, until Permittee obtains all necessary permits or other approvals required by other agencies. If an amended permit is issued, no new facilities shall be utilized, nor shall the amount of water diverted increase beyond the maximum amount diverted during the previously authorized development schedule, until Permittee complies with the requirements of this term.

Within 90 days of the issuance of this permit or any subsequent amendment, Permittee shall prepare and submit to the Division of Water Rights a list of, or provide information that shows proof of attempts to solicit information regarding the need for, permits or approvals that may be required for the project. At a minimum, Permittee shall provide a list or other information pertaining to whether any of the following permits or approvals are required: (1) lake or streambed alteration agreement with the Department of Fish and Game (Fish & G. Code, § 1600 et seq.); (2) Department of Water Resources, Division of Safety of Dams approval (Wat. Code, § 6002.); (3) Regional Water Quality Control Board Waste Discharge Requirements (Wat. Code, § 13260 et seq.); (4) U.S. Army Corps of Engineers Clean Water Act section 404 permit (33 U.S.C. § 1344.); or, (5) local grading permits.

Permittee shall, within 30 days of issuance of all permits, approvals or waivers, transmit copies to the Division of Water Rights.

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| Contact Person: Mitchell Moody | Telephone: (916) 341-5383 Email: mmoody@waterboards.ca.gov |
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APPROVED:

ORIGINAL SIGNED BY:
PHILLIP CRADER FOR

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: DEC 28 2012