



State Water Resources Control Board

**PROPOSED
MITIGATED NEGATIVE DECLARATION**
Pursuant to Section 21092

Public Resources Code

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

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 annum for all uses.
2. The total quantity of water diverted under this permit, together with that diverted under Permit 17360 (Application 24985) and Permit 17361 (Application 25165) shall not exceed 704.3 acre-feet per annum.
3. No work shall commence pursuant to this permit and no additional water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the Department of Fish and Game and the Permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the Permittee. If a stream or lake agreement is not necessary for this permitted project, the Permittee shall provide the Division of Water Rights a copy of a waiver signed by the Department of Fish and Game.
4. 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.

Application 30289 and Permit 17360 (Application 24985):

5. The maximum rate of diversion to offstream storage shall not exceed 4.14 cubic feet per second.

Application 30289 and Permit 17361 (Application 25165):

6. Permittee shall install and maintain devices satisfactory to the State Water Board to measure the instantaneous rate of diversion and cumulative quantity of water diverted under this permit. A record of such measurements shall be maintained by the Permittee for ten years from the date of collection, and made available to interested parties upon reasonable request.

Permit 17360 (Application 24985):

7. This Permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.
8. The capacity of the reservoir covered under this permit shall not exceed 644 acre-feet.
9. The total quantity of water diverted under this permit, together with that diverted under the permit issued pursuant to Application 30289 and Permit 17361 (Application 25165) shall not exceed 704.3 acre-feet per annum.
10. Permittee shall install and maintain devices satisfactory to the State Water Board to measure the rate and quantity of water diverted into the reservoir from Gato Canyon, and water released from or flowing out of the reservoir.
11. Permittee shall maintain the existing outlet pipe for Edwards Reservoir in proper working order.

Permit 17361 (Application 25165):

12. The total quantity of water diverted under this permit, together with that diverted under the permit issued pursuant to Application 30289 and Permit 17360 (Application 24985) shall not exceed 704.3 acre-feet per annum.

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

13. No new work shall commence and no additional water beyond the quantity diverted on or before December 31, 1995 shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the Department of Fish and Game and the Permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the Permittee. If a stream or lake agreement is not necessary for this permitted project, the Permittee shall provide

the Division of Water Rights a copy of a waiver signed by the Department of Fish and Game.

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. Permittee shall install devices, satisfactory to the State Water Board, which are capable of measuring the bypass flows required by the conditions of this permit. Said measuring devices shall be properly maintained.
17. Within six months of the issuance of this permit, the Permittee shall submit a Compliance Plan for approval by the Deputy Director for 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.
 - c) A time schedule for the installation 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 for ten years from the date of collection and made available to the Deputy Director for Water Rights, upon request.

Any non-compliance with the terms of the permit shall be reported by the Permittee promptly to the Deputy Director for Water Rights. Diversion and use of water under Application 30289 and additional use beyond the quantities used on December 31, 1995 under Permits 17360 (Application 24985) and 17361 (Application 25165) prior to approval of the Compliance Plan and the installation of facilities specified in the Compliance Plan is not authorized.

18. The Permittee shall obtain all necessary state and local agency permits required by other agencies prior to project-related construction. Copies of such permits and approvals shall be forwarded to the Deputy Director for Water Rights.
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 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.
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. Permittee shall report any non-compliance with the terms of the permit to the Deputy Director for Water Rights within three days of identification of the violation.
24. 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° 29.366' north latitude and 119° 58.683' 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.
25. 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.
26. 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)(Exhibit 4 – Reservoir Infrastructure & Setbacks). 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.
27. For the protection of riparian habitat and jurisdictional waters, the owner of this water right 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.

28. For the protection of the white-tailed Kite, the owner of this water right 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.
29. 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.
30. 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.

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