

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

DIVISION OF WATER RIGHTS

In the Matter of Application 31050

JACKSON FAMILY INVESTMENTS III, LLC

ORDER CANCELING PROTESTS

SOURCE: Maacama Creek tributary to the Russian River

COUNTY: Sonoma

WHEREAS:

1. Stonestreet, LLC filed water right Application 31050 with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) on March 20, 2000, to divert water from Maacama Creek tributary to the Russian River. On May 1, 2014, the ownership was changed to Jackson Family Investments III, LLC.
2. Jackson Family Investments III, LLC filed a petition for change of Application 31050 on August 18, 2014. The petition for change requested to increase the place of use originally requested when filing the application.
3. The application was noticed on September 15, 2000 and the petition for change was noticed on May 17, 2007. The protests filed by U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Wildlife (CDFW), the National Marine Fisheries Service (NMFS), and J. M. Zukowski are unresolved. The protests were based on environmental concerns and are discussed in detail in the April 2013 Initial Study (2013 IS) prepared for Application 31050.
4. Pursuant to the California Environmental Quality Act, a Mitigated Negative Declaration (MND) (SCH # 2013042051) has been prepared for this project. The MND is located in the application file and is incorporated in this Order by reference. The MND identifies mitigation measures to reduce any impacts to a less than significant level. The terms and conditions identified in the MND that will be included in the water right include: Terms 0400500, 0000207, 0140060, 0050062C, 0000070, 0000203, 0000213, 0000215, 0380500, and 0000208.
5. On April 19, 2013, the Division sent a letter to parties with pending protests describing the 2013 IS/MND. In the letter, the Division requested the parties identify the specific allegations raised in their protests that remained unresolved by information in the 2013 IS/MND and provide a statement of facts supporting the allegations with substantial evidence. The letter advised the parties that if the requested information was not received within 30 days from the date of the letter, their protests may be canceled pursuant to Water Code section 1335.
6. The Protestants did not respond to the Division's April 19, 2013 letter. Based on the following, there is no substantial evidence in light of the whole record to support the allegations raised by the parties.

USFWS: In its protest, USFW expressed concerns that the proposed project would result in the take of California freshwater shrimp. The impacts of the project on special status species and habitats were evaluated in the 2013 IS. The 2013 IS concluded that impacts of the project on California freshwater shrimp would be less than significant with mitigation. The

February Median Flow (FMF) will be bypassed at the point of diversion and a limit will be placed on the rate of diversion from Maacama Creek. In addition, the season of diversion will be restricted.

CDFW: The protest filed by CDFW expressed concerns with impacts to Coho salmon and steelhead in Maacama Creek and on downstream aquatic and riparian resources associated with reduced flows. The impacts of the project on downstream aquatic species and habitats were evaluated in the 2013 IS according to the Draft Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams (Draft Guidelines), and the impacts were found to be less than significant. The Draft Guidelines were developed by NMFS and CDFW to protect and restore anadromous salmonids and their habitats in coastal watersheds. The Draft Guidelines provide standard recommended protective terms and conditions to be followed in the absence of site-specific, biological, and hydrologic assessments. The project complies with the season as recommended by the Draft Guidelines. Further, the FMF will be bypassed at the point of diversion and a limit will be placed on the rate of diversion.

NMFS: In its protest, NMFS expressed concerns with negative effects on Coho salmon and steelhead in Maacama Creek as a result of reduction or interruption of streamflow. As discussed above, the impacts of the project on downstream aquatic species and habitats were evaluated in the 2013 IS according to the Draft Guidelines, and the impacts were found to be less than significant. The project complies with the recommendations of the Draft Guidelines and the right holder will bypass the FMF at the point of diversion.

J.M. Zukowski: The protest filed by J.M. Zukowski expressed concerns that the project would result in over allocation of water within the watershed and impacts to aquatic species from reduced flows. As discussed above, the impacts of the project on downstream aquatic species and habitats were evaluated in the 2013 IS according to the Draft Guidelines, and the impacts were found to be less than significant. The daily flow analysis included in the June 29, 2016 Evaluation of the Jackson Family Investments III, LLC Project estimated the amount of water available for the project. As concluded in the document, there is unappropriated water available to supply the project in most water years, and the project would not result in an over allocation of water within the watershed.

7. The State Water Board has delegated the authority to cancel protests to the Deputy Director of Water Rights pursuant to Resolution No. 2012-0029. The Deputy Director has redelegated this authority to the Assistant Deputy Director, pursuant to redelegation order dated October 19, 2017.

NOW, THEREFORE, IT IS ORDERED THAT THE PROTESTS FILED ON APPLICATION 31050 ARE CANCELED.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY
JULE RIZZARDO, FOR

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: MAY 17 2018