

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

DIVISION OF WATER RIGHTS

In the Matter of Application 31501

COUNTY LINE VINEYARD, LLC

ORDER CANCELING PROTESTS

SOURCE: Unnamed Stream tributary to Mark West Creek thence the Russian River

COUNTY: Sonoma County

WHEREAS:

1. James R. and Carolyn L. Pride filed water right Application 31501 with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) on April 27, 2004 to divert water from an Unnamed Stream tributary to Mark West Creek thence the Russian River. On March 8, 2013, the ownership was changed to County Line Vineyard, LLC.
2. The application was noticed on June 16, 2006. The protests filed by the California Department of Fish and Wildlife (CDFW), Fredrick and Yvonne Wessa, George and Edie Bou, Trout Unlimited (TU), The Friends of the Mark West Creek Watershed, Casey and Maurine Caplinger, and Griffin Okie are unresolved. The protests were based on environmental concerns and are discussed in detail in the April 2014 Initial Study (2014 IS) prepared for Application 31501.
3. Pursuant to the California Environmental Quality Act, a Mitigated Negative Declaration (MND) (SCH # 2014042070) 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 0450300, 0000209, 0140060, 0050062C, 0400053A, 0000203, 0450500, 0000215, 000000K2, and 0000208.
4. On April 23, 2014, the Division sent a letter to parties with pending protests describing the 2014 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 2014 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.
5. TU, Fredrick and Yvonne Wessa, and George and Edie Bou did not respond to the Division's April 23, 2014 letter. Based on the following, there is no substantial evidence in light of the whole record to support the allegations raised by the parties.

Trout Unlimited: In its protest, TU expressed concerns that the proposed reservoir would be taking water from a stream at a time of low flows and capturing early season rainfall important to upstream migrating Coho salmon and steelhead. The impacts of the project on downstream aquatic species and habitats were evaluated in the 2014 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 the National Marine Fisheries Service (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 and meets all three special circumstances for permitting of an onstream dam; therefore, no streamflow or fish passage protection measures are required at the onstream reservoir. Further, the February median flow (FMF) will be bypassed at point of diversion 2, as required by the Draft Guidelines evaluation.

Frederick and Yvonne Wessa: The protest filed by Frederick and Yvonne Wessa expressed concerns with reduced flows as a result of reservoir construction and potential impacts to aquatic species. As part of the protest dismissal terms, Frederick and Yvonne Wessa requested the installation of a bypass device at the reservoir to ensure water is not collected outside of the authorized season of diversion. As discussed above, the impacts of the project on downstream aquatic species and habitats were evaluated in the 2014 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 meets all three special circumstances for permitting of an onstream dam; therefore, no streamflow or fish passage protection measures are required at the onstream reservoir. Continuous monitoring at the reservoir is required in addition to monitoring of reservoir releases and withdrawals under Term 0100699A1. As stated above, the right holder will bypass the FMF at point of diversion 2.

George and Edie Bou: In their protest, George and Edie Bou expressed concerns that the proposed reservoir would adversely affect the headwaters and gravel beds of a steelhead stream during spawning. As discussed above, the impacts of the project on downstream aquatic species and habitats were evaluated in the 2014 IS according to the Draft Guidelines, and the impacts were found to be less than significant. In addition, the 2014 IS evaluated the potential to adversely affect instream flows and fishery resources by interrupting downstream movement of gravel. The 2014 IS concluded that the proposed project would not substantially interrupt coarse sediment transport.

6. Giffin Okie informally responded to the Division's April 23, 2014 letter by phone to request additional information related to the locations of the points of diversion, flow meters, passive bypass, and grading permits. Division staff provided the requested information. Based on the following, there is no substantial evidence in light of the whole record to support the allegations raised by Griffin Okie.

Giffin Okie: The protest filed by Griffin Okie expressed concerns with injury to prior rights and instream flows. As part of the protest dismissal terms, Griffin Okie requested the installation of a bypass device at each point of diversion and at downstream properties to avoid impacts to endangered and threatened species. The 2014 IS evaluated impacts to downstream water supply and senior water right holders and concluded that the project would not adversely affect any senior water right holders. In addition, the water right will be conditioned subject to prior rights. As discussed above, the project complies with the recommendations of the Draft Guidelines and meets all three special circumstances for permitting of an onstream dam; therefore, no streamflow or fish passage protection measures are required at the onstream reservoir. Continuous monitoring at the reservoir is required in addition to monitoring of reservoir releases and withdrawals under Term 0100699A1. The FMF will be bypassed at point of diversion 2, as required by the Draft Guidelines evaluation.

7. Casey and Maurine Caplinger, The Friends of the Mark West Creek Watershed, and CDFW responded to the Division's April 23, 2014 letter. The Consultant developed responses to all comments received on the 2014 IS/MND, including The Friends of the Mark West Creek Watershed, Casey and Maurine Caplinger, and CDFW, which concluded that that terms and conditions identified in the draft water right adequately address concerns raised by the parties that filed protests. The identified terms and conditions will be substantially included in any water right issued.
8. The responses to comments are included in an Errata package, dated March 29, 2016. The Errata package evaluates whether the additional engineering plan detail developed subsequent to the public review of the 2014 IS/MND would result in any changes to the environmental impacts or mitigation measures evaluated in the 2014 IS/MND. Because the Errata concluded that none of the changes in the project would lead to new significant environmental impacts, intensify any environmental impacts evaluated in the 2014 IS/MND, or create the need for additional mitigation measures, recirculation of the 2014 IS/MND was not required. The Errata package was provided to CDFW on March 15, 2017 and will be posted on the Division's website.
9. 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 July 6, 2012.

NOW, THEREFORE, IT IS ORDERED THAT THE PROTESTS FILED ON APPLICATION 31501 ARE CANCELED.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:
JOHN O'HAGAN, FOR

Leslie F. Grober, Deputy Director
Division of Water Rights

Dated: APR 24 2017