BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

WATER RIGHT APPLICATION 30166 OF EL SUR RANCH, BIG SUR RIVER IN MONTEREY COUNTY

JOINT HEARING MANAGEMENT CONFERENCE STATEMENT AND HEARING MANAGEMENT PLAN

Date: April 30, 2019
Time: 9:30 a.m.
Room: Conference Room 230 (2nd Fl.)
Location: Joe Serna, Jr. CalEPA Bldg.
          1001 I Street
          Sacramento, CA 95812
Dial-in: (888) 273-3658
Passcode: 300828
INTRODUCTION

El Sur Ranch (“ESR”) and the California Department of Fish and Wildlife (“CDFW”) hereby submit the following Hearing Management Conference Statement (“Conference Statement”) and Hearing Management Plan (“Plan”). ESR and CDFW are proponents of a Settlement Agreement that seeks to resolve most outstanding issues between these two parties. The unresolved issues in the Settlement Agreement are submitted for resolution to the State Water Resources Control Board (“State Water Board”).

BACKGROUND

The current proceeding before the State Water Board arises out of an application by ESR to divert water from the Big Sur River in Monterey County, California. The Big Sur River is an uncontrolled coastal stream where summer- and wintertime flows can vary from as little as 3 cubic feet per second (“CFS”) to greater than 1,000 CFS.

ESR is the farthest downriver diverter on the Big Sur River. It owns and operates two wells on an easement it has with the California Department of Parks and Recreation, which easement is located adjacent to and just north of the Big Sur River. These wells are used to irrigate approximately 267 acres of irrigated pasture.

In 2011, the State Water Board held a hearing regarding the application. Both prior to and since the hearing, ESR and CDFW have been negotiating terms for the resolution of all issues raised in the proceedings by those parties. As a show of good faith, ESR began implementing its proposed settlement terms and those agreed to between ESR and CDFW following the hearing. Those measures include limitations on pumping from the wells and implementation of numerous non-flow measures. The flow measures take into consideration the objectives of providing suitable habitat during all life stages for the steelhead fishery and the livelihood of the cattle ranching operation on ESR.

The terms of the Settlement Agreement are summarized below and a copy of the Settlement Agreement dated April 15, 2019 is attached as Exhibit C. ESR and CDFW recognize that the Settlement Agreement includes measures that are not within the State Water Board’s jurisdiction and that the terms of the Settlement Agreement within the jurisdiction of the State Water Board will have
to be set forth in terms appropriate for a water rights permit.

The State Water Board has requested both a Hearing Management Conference Statement ("Conference Statement") and a Hearing Management Plan ("Plan"). Both the Conference Statement and the Plan are attached hereto as Exhibits A and B, respectively.

**SUMMARY OF SETTLEMENT AGREEMENT**

The following is a general summary of the Settlement Agreement. This summary is to provide the reader with a basic idea of the settlement and does not contain important detail included in the proposed Settlement Agreement attached hereto.

ESR agrees not to pump from its two wells during such times as the flow level in the River as measured at USGS gage 11143000 falls below the following benchmark levels ("Bypass"): November 1-April 30 Bypass 75 cfs (if flows drop below 75 cfs, the Bypass is reduced to 55 cfs, subject to specified terms); May 55 cfs; June 1-October 31 23-17 cfs.

30-day average pumping rate 5.34 cfs. Maximum annual diversion 1320 AF, not to exceed 1087 on 20-year rolling average. Water year October 1-September 30.

Provides for a conference year under critical conditions.

Flow monitoring and reporting is required.

Off-stream reservoir to be constructed on what is now Pumphouse Field. Replacement pasture to be developed on north side of existing irrigated pasture. Interim bypass flows specified until reservoir is built.

Specified conditions regarding water use and land management. (See Attachment 1 to Settlement Agreement.)

The Settlement Agreement does not resolve all issues. Remaining issues are

- Implementation of the Stepdown from 23-17 cfs.
- Reset mechanism when November–April Bypass drops below 75 cfs, is then reset to 55 cfs and under what condition it may return to 75 cfs.
- Bypass implementation effective date following final approval of permit conditions by State Water Board.
CONCLUSION

CDFW and ESR respectfully request the following of the State Water Board:

1. The State Water Board give due consideration to the approach suggested by these parties at the upcoming Hearing Conference.

2. That CDFW, ESR, and other parties be afforded an opportunity to work with State Water Board staff to a) prepare settlement agreement conditions subject to the jurisdiction of the State Water Board in an appropriate form, b) prepare amendments to the application for adoption as permit terms, and c) hold a hearing at the appropriate time to consider the permit terms, proposed amendments to the application, and determine the issues not resolved by the Settlement Agreement.

3. The State Water Board accept the Settlement Agreement terms subject to its jurisdiction without material modification
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issues, hydrologic issues, and possibly ranch management issues.

At this time neither ESR nor CDFW anticipate making any motions in advance.

Dated: April 15, 2019

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By letter dated March 28, 2019, the State Water Board requested ESR and CDFW to submit an update to the status of their conversations with other hearing participants concerning the settlement terms and a Hearing Management Plan by April 14, and to appear at a hearing with all parties on April 30, 2019 regarding the application by El Sur Ranch ("ESR") to divert water through pumps located on its property adjacent to the Big Sur River, Monterey County, California.

1. Application: 30166, Filed July, 1992
2. Hearing held: June 16, 17, July 8, 11, 2011.
3. Further proceedings: Amendment to application for off-stream reservoir storage and additional place of use. Compliance with California Environmental Quality Act to address amendments to application.
4. Are additional hearings required? Yes. A hearing will be required on proposed Settlement Agreement, outstanding issues submitted to the State Water Board by ESR and CDFW, consideration of amended application.
5. Conversations with other hearing participants: The other parties to the proceeding received a draft of the Settlement Agreement on March 1, 2019. ESR and CDFW held a conference call with the other parties to the proceeding on April 4, 2019. During the call ESR and CDFW went through each of the Settlement Agreement’s terms and the outstanding issues to be referred to the State Water Board. ESR and CDFW would like to receive an early indication of issues that remain of concern to the other parties so they may be addressed at a hearing.
6. Additional considerations: ESR will need time to prepare an amended application supported by appropriate engineering information and environmental analysis concerning the proposed off-stream storage and environmental information concerning the proposed new place of use, as well as environmental review of the proposed amended application. Estimated timeframes to prepare the aforementioned information is presented below.
7. Estimated length of time required for hearing: 3 days.
8. Proposed hearing dates: No hearing date is proposed at this time because ESR and CDFW have not agreed upon one. ESR recommends that a hearing date be scheduled to permit the preparation of the necessary environmental and engineering information, the amended application for a water rights permit, opportunity for the parties and other interested persons to comment on the environmental and engineering information, preparation of written testimony, analysis of that written testimony, and preparation for hearing. Assuming that the engineering information could be prepared within the next 120 days; settlement agreement conditions subject to the jurisdiction of the State Water Board in an appropriate form are prepared with input from State Water Board staff; an amended application is filed at the State Water Board within 150 days; a contractor is available to prepare the environmental documentation; the contractor could complete environmental review within a nine month timeframe if it will be possible to use the same environmental consultant, Atkins, that prepared the current environmental impact report (SCH No. 2006061011, May 2011); the parties and other interested persons are afforded 30 days to review and comment on the environmental documentation; and the parties are afforded sufficient time to prepare for a hearing (+30 days), including the submittal of written testimony (+30 days) and review thereof (+30 days); then ESR believes it appropriate to schedule a hearing in approximately 18-20 months. CDFW prefers a hearing date be scheduled sooner than 18-20 months and that preparation of an amended application and related environmental and engineering information be included in a compliance schedule as part of any order issued after a hearing.
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ESR and CDFW agree that the record should not be reopened in this proceeding except as is specifically and narrowly necessary to address facts that are in dispute. The parties and interested persons have had an opportunity to address issue of concern and reopening the record to address issues that were the subject of policy statements or evidence is unnecessary and inappropriate. However, ESR and CDFW agree that the record should be reopened to address the facts that are in dispute in the Settlement Agreement and to address new issues raised by the settlement. In particular, the record should be reopened to address the issues concerning:

- Implementation of the Stepdown from 23-17 cfs.
- Reset mechanism when November–April Bypass drops below 75 cfs, is then reset to 55 cfs and under what condition it may return to 75 cfs.
- Bypass implementation effective date following final approval of permit conditions by State Water Board
- The amended application issues regarding the off-stream reservoir and the additional place of use.

I. Any facts to which ESR and CDFW Can Stipulate

A multitude of facts were raised in this proceeding by various witnesses. It does not appear to ESR or CDFW that it is necessary to identify each and every fact to which these parties agree or disagree, but rather that the focus should be on those facts that are supportive of the SA and those new facts that may be raised by other parties to the proceeding in response to the SA. To that end, ESR and CDFW agreed on the following factors as detailed in the SA:

- Bypass would be measured at USGS gage 11143000
- From November 1-April 30, the Bypass would be at 75 cfs. When flows are below 75 cfs for 14 consecutive days then on the 15\textsuperscript{th} day a 55 cfs Bypass would apply.
- From May 1-May 31, the Bypass would be at 55 cfs.
From June 1 – October 31 the Bypass would be at 23 – 17 cfs. The flow requirement is 23 cfs. However, the Parties agree that pumping may continue after the flow drops below 23 cfs so long as the pumping rate is reduced and there is a complete cessation of pumping when flow is 17 cfs.

- 30-day average pumping rate 5.34 cfs. Maximum annual diversion 1320 AF, not to exceed 1087 on 20-year rolling average. Water year October 1-September 30.

- Flow monitoring and reporting is required.

- A conference year under critical conditions is available.

- Off-stream reservoir to be constructed on what is now Pumphouse Field.

- Interim bypass flows specified until the Bypass becomes effective.

- Use and replacement of water in off-stream reservoir allowed.

- Specified conditions regarding water use and land management. (See Attachment 1 to Settlement Agreement.)

II. The Specific Areas of Fact and Law that Are In Dispute

ESR and CDFW were unable to come to agreement on the following factors:

- Implementation of the Stepdown from 23-17 cfs. ESR and CDFW agree on the appropriateness of the Stepdown range and that there would be a reduction in rates of pumping, but do not agree on the reduced rate of pumping and by implication the impact of pumping on river flow or stage.

- Reset mechanism when November –April Bypass drops below 75 cfs, is then reset to 55 cfs and under what condition it may return to 75 cfs. CDFW’s view is that the Bypass should drop from 75 cfs to 55 cfs once flow is below 75 cfs for 14 consecutive days and return to the 75 cfs if the flow increases above 75 cfs for 1 day. It is ESR’s view that an increase in Bypass flow from 55 cfs to 75 cfs should be on the same timescale as the reduction in Bypass flow, e.g. 14 consecutive days to go from 75 cfs down to 55 cfs and 14 consecutive days to go up from 55 cfs to 75 cfs.
Bypass implementation effective date following final approval of permit conditions by State Water Board. This time is primarily necessary to process the permits for approval and construction of the storage reservoir. It is CDFW’s view that ESR should be allowed 24 months from the time the State Water Board’s order is “final”. It is ESR’s view that it should be allowed 60 months with the time tolled while an agency is processing and “finalizing” the permit.

It is unknown what issues may be raised by other parties or as a result of CEQA review. ESR and CDFW reserve the right to address those issues as well.

III. The Disputed Factual Issues on which ESR and CDFW Intend to Present Evidence in the Supplemental Hearing

- Implementation of the Stepdown from 23-17 cfs.
- Reset mechanism when November–April Bypass drops below 75 cfs, is then reset to 55 cfs and under what condition it may return to 75 cfs.
- Bypass implementation effective date following final approval of permit conditions by State Water Board.

While not disputed, ESR and CDFW will or may present evidence to support the terms of the SA and the amended application for the storage reservoir and the additional place of use.

IV. Amount of Time Necessary to Conduct the Supplemental Hearing Including the Number of Expert Witnesses CDFW and ESR Plan to Call and Any Motions They Plan to Make in Advance of the Hearing.

ESR and CDFW estimate the supplemental hearing will require up to three days.

ESR anticipates it will call as witnesses Mr. James Hill and experts to address crop water needs (1 witness), biological issues (2 witnesses), other environmental issues (1 witness), and hydrologic issues (1 witness).

CDFW anticipates it will call as expert witnesses to address biological and scientific studies issues, hydrologic issues, and possibly ranch management issues.

At this time neither ESR nor CDFW anticipate making any motions in advance.
Dated: April 15, 2019

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EXHIBIT C

DRAFT SETTLEMENT AGREEMENT
DATED APRIL 15, 2019

DRAFT.

EL SUR RANCH SETTLEMENT PROPOSAL
TO DEPARTMENT OF FISH AND WILDLIFE

Privileged and Confidential. Settlement Communication.
Not Admissible Pursuant to Evidence Code Section 1152.

The following represent settlement terms and principles to be agreed to between El Sur Ranch ("E.S.R.") and the Department of Fish and Wildlife ("CDFW") regarding resolution of the CDFW protest before the State Water Resources Control Board ("Water Board") concerning Application No. 30166. These terms are proposed consistent with the Principles agreed to between CDFW and E.S.R. E.S.R. and CDFW are each referred to as a "Party" or collectively as the "Parties."

The Parties agree as follows.

PRELIMINARY MATTERS

A. The Parties agree to advocate for the terms of settlement with all parties who provided negative comments in the Water Board proceedings and to advocate to the Water Board that the settlement should be adopted in its entirety without material modification. However, the Parties also recognize that there are issues the Parties could not reach agreement on and as a result require resolution by the Water Board.

B. In the event that the Water Board adopts an order inconsistent with this agreement or should the order require more of E.S.R. than agreed to by the Parties, E.S.R. shall have the right to withdraw from this settlement and to object and challenge the Water Board’s order. In the event that the Water Board’s order does not provide the level of protection sought by CDFW, CDFW shall have the right to withdraw from this settlement and to object and challenge the Water Board’s order. Prior to either Party withdrawing from the settlement, they shall promptly meet and confer in an effort to develop a compromise agreement among themselves that meets the needs of both Parties. If neither Party opposes the order of the Water Board, which differs in any material respect from this Agreement, this Agreement shall be deemed modified to be consistent with the Water Board’s order.

C. CDFW understands that E.S.R. has, as a measure of good faith, started implementing measures from Attachment 1. To the extent CDFW can verify such implementation, those measures will be part of the settlement and compliance with a Water Board order. The completed measures and those underway will not be deemed to be part of the baseline. The parties agree to advocate this treatment of the implemented measures to the Water Board.
1. **Diversion Limits**

   a. E.S.R. agrees to not pump or to reduce the rate of pumping, as applicable, from its two wells that divert water from what E.S.R states is the subterranean flow of the Big Sur River and what CDFW states is the Big Sur River (without supporting either party’s characterization, this document refers to both characterizations as the “River”), during such times as the flow level in the River, as measured at the USGS gage 11143000 (the “Upper Gage”), falls below the benchmark levels set forth below. The benchmark levels are referred to as the Bypass. River flow will be measured on a daily mean and that information can be accessed on the website provided by the USGS for the Upper Gage here:

   b. From November 1-April 30, the Bypass shall be at 75 cfs. The Parties also agree that when flows are below 75 cfs for 14 consecutive days then on the 15th day a 55 cfs Bypass would apply. The Parties are not in agreement as to when the 55 cfs Bypass is reset to 75 cfs and as a result it is mentioned in section 6.b. below.

   c. May 1- May 31: 55 cfs

   d. June 1 – October 31: 23 – 17 cfs. The flow requirement is 23 cfs. However, the Parties agree that pumping may continue after the flow drops below 23 cfs so long as the pumping rate is reduced and there is a complete cessation of pumping when flow is 17 cfs (the “Stepdown”). The Parties are not in agreement as to the pumping reductions during the Stepdown and as a result it is mentioned in section 6.a. below.

   e. 5.84 cfs E.S.R. maximum instantaneous pumping rate, year round.

   f. 5.34 cfs E.S.R. pumping rate on a 30-day average, year round.

   g. Maximum annual diversion amount 1320 AF per year, not to exceed 1087 AFY on a 20-year rolling average. The year is measured October 1-September 30.

   h. Conference Year. A Conference Year (CY) occurs in a critically dry year that was preceded by a normal or dry year (the year type can be determined based on the flows in Attachment 2) in which there were at least three months of reduced diversions (i.e. reduced diversions for a portion of the month resulting in an inability for E.S.R. to complete an irrigation cycle based on direct diversion for use) due to application of the bypass flow requirements. In a CY, the parties agree to examine the condition of the river, whether or not passage exists and under what conditions, the presence or absence of steelhead seeking passage between habitat units in the river and lagoon within the zone of influence of the pumps, and to determine if a program could be implemented that will permit limited pumping sufficient to keep the pasture alive, prevent the creation of dust conditions and protect against the growth of noxious weeds and the occurrence of invasive plants. In a CY, pumping would occur from the Old Well only, unless conditions exist at times when use of the new well would not have a material impact on river flows needed for the fishery purposes set forth in this paragraph.

2. **Monitoring**

   a. E.S.R. has and will maintain flow meters at each well used in the irrigation of the pasture. E.S.R. will record, on an hourly basis, the volume and rate of diverted water from each well, including instantaneous and cumulative diversion amounts (the “Monitoring Data”).

   b. E.S.R. shall maintain Monitoring Data for at least 10 years from the date of collection. E.S.R. shall provide the Water Board and CDFW the data by the 15th day of each month.
beginning with the first month after the Bypass Effective Date (defined in section 4.a. below). After 18 months of providing the data to the Water Board and CDFW, E.S.R. may change the frequency it provides data to the 15 day of every third month (i.e. quarterly basis). After 18 months of providing the data to the Water Board and CDFW on a quarterly basis, E.S.R. may change the frequency it provides data to an annual basis.

c. If E.S.R. intends to change the frequency by which it provides data as provided in section 2.b. above, E.S.R. shall inform the Water Board and CDFW of such intent at least 30 days before the next date that data would be provided. E.S.R. may proceed with changing the frequency of providing data if the neither the Water Board nor CDFW object to such change within 30 days of receiving notice of E.S.R.'s intent. If either the Water Board or CDFW object to a change in the frequency, E.S.R. will continue the frequency of providing data for an additional 9 months before E.S.R. may seek to change the frequency again.

d. E.S.R. will also provide the monitoring data to the Water Board or CDFW upon request of either entity. E.S.R. will provide the data within two business days of such request.

3. Reservoir

a. E.S.R. intends to construct a reservoir on the Pumphouse Field. E.S.R. is also considering construction of a second reservoir at a location to be determined. To replace the land lost to the Pumphouse Field reservoir, E.S.R. intends to develop additional pasture on the north side of the existing pasture in an area that is not habitat to listed endangered species and uses, per acre and in total, less water than the Pumphouse field. CDFW supports the concept of the reservoirs and replacement pasture. However, until CDFW receives specific information about the reservoirs and replacement pasture it reserves its support for the specific proposal.

b. If water is to be removed from the Pumphouse Field reservoir and immediately used in fighting an active fire or requested by a public agency to be immediately used for some other public health and safety emergency, E.S.R. shall be permitted to divert a sufficient amount of water to replace what was taken. E.S.R. shall in said instance either refill the lost water within the limitations set forth herein or if that is not practical, then E.S.R. may exceed the limitations by 10% or if the allowable diversion is at zero, then at a rate of pumping of approximately 0.5 CFS, until the reservoir is refilled. E.S.R. may exceed the limitations set forth herein only if the public agency that removed the water provides E.S.R. the quantity of water removed and the means by which the quantity was measured. E.S.R. will provide CDFW that information from the public agency before exceeding the limitations.

4. Interim Diversion

a. The Parties are not in agreement as to the date or time when the Bypass becomes effective ("Bypass Effective Date"), and that is mentioned in section 6.c. below.

b. Until the Bypass Effective Date, E.S.R. may operate its pumps and divert until the river flow drops to 10 cfs at which point diversions shall cease. There shall be no diversions commencing on Friday night at 5:00 pm until Monday at 5:00 pm on Memorial Day and Labor Day weekends and from July 3 at 5:00 pm until July 5 at 5 am.

5. Recalculation of Bypass

If USGS gage number 11143010 ("Lower Gage") is made operational and permanent funding is provided to maintain and otherwise operate the Lower Gage, once the upper and Lower Gages are synchronized, E.S.R. can request and CDFW will recalculate the Bypass to be at the Lower Gage. Either Party may then request a modification to the Water Board’s Order, or other applicable procedural mechanism, to measure the recalculated Bypass at the Lower Gage.
6. Terms to be resolved by the Water Board

   a. Stepdown: as mentioned in section 1.d. above, the Parties have not reached agreement as to how the Stepdown would be implemented. CDFW proposes that the flow requirement is 23 cfs, but that E.S.R. may continue to operate its pumps such that net river flow never drops below 17 cfs. Net river flow is calculated by subtracting the instantaneous pumping rate from the river flow. Under CDFW’s proposal, once river flow decreases below 23 cfs, E.S.R. is to reduce its instantaneous pumping rate to maintain net river flow at 17 cfs or higher. E.S.R. proposes the following:

   \[
   \begin{align*}
   < 23 - 21 \text{ cfs}. & \quad \text{Maximum rate of pumping 4.8 cfs.} \\
   < 21 - 19 \text{ cfs}. & \quad \text{Maximum rate of pumping 4.3 cfs.} \\
   < 19 - 17 \text{ cfs}. & \quad \text{Maximum rate of pumping 3.8 cfs.}
   \end{align*}
   \]

   b. Bypass reset from 55 cfs to 75 cfs: As mentioned in section 1.b. above, the Parties agree that from November 1-April 30, the Bypass shall be at 75 cfs. The Parties also agree that when flows are below 75 cfs for 14 consecutive days then on the 15th day a 55 cfs Bypass would apply. The Parties have not reached agreement as to when the 55 cfs Bypass would reset to 75 cfs. E.S.R. proposes that the 55 cfs Bypass does not return to 75 cfs until flows return to or exceed 75 cfs for 14 consecutive days. Stated differently, if flows return to or exceed 75 cfs for 14 consecutive days, the Bypass would reset to 75 cfs. For illustrative purposes, if from January 1-14, flows are at 70 cfs, during this time there should be no pumping. If on January 15 the flow is at 70 cfs, the Bypass is lowered to 55 cfs and pumping may occur. On January 20 the flow rises to or exceeds 75 cfs and if it continues for 14 consecutive days the 75 cfs Bypass applies again. If on February 4 the flow is at 70 cfs and continues for 14 consecutive days the 55 cfs Bypass would apply again. The reason for the lowered Bypass of 55 cfs is to recognize variability in water year types and allow some pumping during the drier years. CDFW proposes that the 55 cfs Bypass would return to 75 cfs once flows return to or exceed 75 cfs. The flows do not need to meet or exceed 75 cfs for 14 consecutive days. Under CDFW’s proposal the example is modified as follows: on January 20 the flow rises to or exceeds 75 cfs and as a result the 75 cfs Bypass applies again. If on January 21 the flow is at 70 cfs, pumping must stop and the counting up to 14 consecutive days begins again before the 55 cfs Bypass may apply.

   c. Bypass Effective Date: As mentioned in section 4 above, the Parties have not reached agreement as to the date or time of the Bypass Effective Date. E.S.R. expects that permitting and construction of the Pumphouse Field reservoir could take at least 5 years from the time of “Final” action by the State Water Board to obtain all additional required permits and to develop the reservoir (including completion of construction). When used in this section, the term “Final” in all of its forms, includes exhaustion of all judicial reviews or other proceedings. E.S.R. proposes that the Bypass Effective Date be when the Pumphouse Field reservoir is fully operational, which requires certification by an authorized engineer and all permits, provided that E.S.R.: a) files annual progress reports with the Board, b) the Board does not make a final determination that the E.S.R. has not been diligent in seeking to complete the reservoir construction and E.S.R. has not taken more than 5 years to complete its tasks necessary for obtaining all permits. Time taken by permitting agencies and any judicial processes is not included in calculating E.S.R.’s 5 year timeframe, that is, the 5 years is tolled during the time that an agency is processing and finalizing a permit or other application for E.S.R. CDFW proposes that the Bypass Effective Date be 24 months from a Final Order by the Water Board with “Final Order” defined as the exhaustion of all appeals, including CEQA, CWA Section 401 certification and other regulatory and judicial review(s) of an order or other action by the Water Board on this matter.
7. **Water Board Order**

The Parties recognize that these terms will have to be reduced into a form which is capable of being incorporated into a Water Board order and permit terms. The Parties agree to work cooperatively with the Water Board to prepare permit terms in a form acceptable to the Water Board but without material modification to such terms.

8. **Support**

E.S.R. and CDFW will support implementation of the settlement agreement. Such support could include, but is not required to be except within CDFW’s sole discretion, CDFW supporting any permitting applications submitted by E.S.R. to another public agency.

9. **Form of Settlement Agreement**

Shortly after finalization of the terms in this document, the Parties will provide it to the Water Board as a term sheet containing the terms that are in agreement and to be resolved by the Water Board (“Term Sheet”). Separate from submitting the Term Sheet to the Water Board, the Parties also agree to develop a settlement agreement memorializing the final terms of settlement that is consistent with this document, including typical boilerplate, including but not limited to, binding nature, settlement of all claims unless excepted, waiver, entire agreement, uncontrollable forces, representation by counsel, warranties, partial invalidity, assignability, notice, no third-party beneficiary, and others. Developing such a settlement agreement will not delay submitting the Term Sheet to the Water Board.

OPERATIVE CONDITIONS REGARDING WATER USE AND LAND MANAGEMENT

E.S.R. Ranching and Land Maintenance Best Management Practices

The following conservation measures and best management practices (“BMPs”) are expected to be implemented on a reasonable timetable that recognizes ranch operations, cash flow, overall cost of BMPs and individual BMPs, and opportunistic events.

a. Adoption of a long-term program to replace the old metal water distribution system pipelines with new materials, which materials are to be determined by E.S.R. (Underway)

b. In lieu of or in addition to replacing the existing irrigation system, E.S.R. may convert all or a portion of its irrigation system with drip tape or other efficient irrigation methods.

c. Subsurface drip-tape irrigation (SDI) Pilot Program. E.S.R. is exploring the use of SDI to reduce overall water use and/or rate of diversion from the Big Sur River (“B.S.R.” or “River”). E.S.R. will install SDI on a sample section of pasture to determine whether SDI is compatible with a cattle operation, cost effective and reduces water consumption without adverse impact to crop production. E.S.R. will employ an irrigation expert to monitor the pilot program. The results of the program will be reported to CDFW. The pilot program is expected to last for five years unless demonstrated ineffective or uneconomical prior thereto. If the pilot program is successful, at E.S.R.’s discretion it will install SDI over the following 10 years.

d. The following ranch-related measures are taken from the 2012 joint efforts of land/ranching experts Dave Feliz and Orrin Sage. These are measures that are being implemented in the near and longer term or are considered for future deployment. If grant funding is available, it may be used for any of these measures. Depending upon what is actually implemented, some measures may no longer be applicable or will require modification. For example, E.S.R. is exploring SDI, which if implemented could render a new tailwater pond unnecessary, or converting the Pumphouse field to a reservoir, which would obviate need to modify irrigation of Pumphouse field, etc.

Only to the extent necessary will any of these be included in the Water Board permit. Otherwise they will be enforceable through agreement between E.S.R. and CDFW

(i) R-1 – Renovate existing main lines and laterals. Currently being implemented on incremental basis.

(ii) R-2 – Upgrade new well pumping system. Nearly complete. Upgraded to variable speed drive.

(iii) R-3 – Night irrigation during low flow period. This will not be possible under the sliding scale reduced rate of diversion approach requested by CDFW

(iv) R-4 – Use existing test wells for irrigation and/or streamflow augmentation. One test well appears to have reasonable output of 500 gpm, is farther from the river, will have no measurable impact on the river, but it is uncertain whether the well is operable or needs rehabilitation.

(v) R-10 – Expand off-river storage. E.S.R. is exploring the conversion of the Pumphouse field to a reservoir site. Net change in expansion of place of use shall use less
water than used by Pumphouse field. Pumphouse field reservoir would be filled primarily
during high flow events on an opportunistic basis.

(vi) R-11 - Expand tailwater pond. This may or may not be practical, depending
upon the results of the SDI study. If there is excess tailwater after irrigation improvements
have been made such that there is a material amount of water to be produced.

(vii) R-12 - Build new tailwater recovery pond. See R-11.

(viii) R-13 - Build small night pond catchment in Swiss Canyon drainage.
CDFW/U.S.F.W.S. will have to determine if this can be permitted. Utility of a night pond will
depend upon the authority to fill it on a regular basis.

(ix) R-15 - Modify Pumphouse field irrigation practices. This is being explored at
this time.

(x) R-17 - Pre-irrigate. This will be instituted if a flow regimen is instituted that
permits pre-irrigation.

(xi) R-18 - Install soil moisture gauges. In process.

(xii) R-20 - Improve dryland rangeland conditions. In process.

(xiii) R-22 - CDFW to provide permit and funding assistance.


(xv) R-24 - Watershed management. E.S.R. has been working with Monterey Co.
watershed management process. Completed.

(xvi) R-25 - Prepare water conservation and operational management plan.

10. Adaptive Management Program to Enhance Resource Values of the Big Sur River

a. E.S.R. will monitor water quality data in conjunction with its metering of its water
use from its wells. Water quality parameters to be tested on at least a bi monthly basis are salinity,
dissolved oxygen and temperature.

b. Meters shall keep a log of all water use. E.S.R. shall use its best efforts to keep a
daily log of all water use and shall make these records available to the Board and the Department of
Fish and Wildlife.

c. E.S.R. shall employ a fisheries biologist to periodically assess conditions in the
B.S.R. within the zone of influence of the E.S.R. wells and of the lagoon. The fisheries biologist, or
appropriately supervised personnel working under the direction of the biologist, shall take the
following measurements once monthly between May 1 and October 31: (1) deploy water
temperature monitoring units at three locations (near the old U.S.G.S. 11143010 gauge site, adjacent
to the E.S.R. wells, and in the lagoon) to monitor and record temperature at 10-minute intervals; (2)
grab sample measurements of water temperature, dissolved oxygen, and electrical conductivity at a
location adjacent to the E.S.R. wells and at two locations in the lagoon (near the head of the lagoon
and mid-lagoon); and (3) conduct a visual inspection of the river between the lower U.S.G.S. gauge
site and the lagoon to characterize surface water connectivity among habitat units (identify any areas
that are dewatered), potential passage barriers or impediments, and areas where potential juvenile
stranding may occur as flows decrease. Results of monitoring will be reported to CDFW each year for the first five years of permit implementation.

d. The following biological measures are taken from the 2012 joint efforts of biologists Rob Titus/Chuck Hanson. If grant funding is available for any of these measures, CDFW will support E.S.R.'s efforts to obtain grant funding. These are measures that are being considered for future deployment and may or may not involve E.S.R. To the extent E.S.R. becomes involved with these measures, such involvement will be subject to the same funding parameters as implementation of the ranching and land management BMPs.

(i) B-1 - Gorge blockage. *Not successful to date. Likely would be implemented by state and/or federal agencies.*

(ii) B-4 - In-channel habitat enhancement. *CDFW has stated in the past that they do not believe any measures are needed at this time in the E.S.R. area.*

(iii) B-5 - Instream flow augmentation. *Concept put on the shelf at this time.*

(iv) B-10 - Regulate summer dams. *This would be an educational and enforcement effort by CDFW and D.P.R.*

(v) B-13 - Financial contributions/Local cost share. *As grants become available, the interested B.S.R. stakeholder community will seek to take advantage. E.S.R. will participate.*

- Participate in the watershed wide management plan process. *Completed.*
Attachment 2

[insert Exhibit DFG-C-4]
PROOF OF SERVICE

Water Right Application 30166 of El Sur Ranch, Big Sur River in Monterey County

I am a citizen of the United States, over the age of 18 years, and not a party to this action. I am an employee of Duane Morris LLP and my business address is One Market, Spear Tower, Suite 2200, San Francisco, California 94105. I am readily familiar with this firm’s practices for collecting and processing correspondence for mailing with the United States Postal Service and for transmitting documents by FedEx, fax, email, messenger and other modes. On the date stated below, I served the following documents:

JOINT HEARING MANAGEMENT CONFERENCE STATEMENT AND HEARING MANAGEMENT PLAN

☑ BY ELECTRONIC SERVICE: I caused the documents to be sent to the person(s) at the e-mail addresses listed on the attached Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Please See Attached Service List

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 15, 2019, at San Francisco, California.

[Signature]

Blanca Herrera
HEARING REGARDING WATER RIGHT APPLICATION 30166 FILED BY EL SUR RANCH (BIG SUR RIVER) – MONTEREY COUNTY

HELD ON
JUNE 16, 17, 2011
AND JULY 8, 11, 2011

UPDATED SERVICE LIST
(March 28, 2019)
corrected for typographical errors

PARTICIPANTS TO BE SERVED WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (Note: The participants listed below agreed to accept electronic service, pursuant to the rules specified in the hearing notice.)

<table>
<thead>
<tr>
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### El Sur Ranch Hearing
Service List and Interested Persons List

- **CARMEL RIVER STEELHEAD ASSOCIATION**
  - Mr. Brian LeNeve
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  - Carmel, CA 93921
  - bjleneve@att.net
  - (831) 624-8497

  **THE FOLLOWING ARE INTERESTED PERSONS WHO WILL PARTICIPATE BY POLICY STATEMENT ONLY. IT IS NOT NECESSARY TO SERVE THEM WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS.**

- **CALIFORNIA STATE PARKS**
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  - Monterey, CA 93940
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- **CAL FIRE**
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  - Monterey, CA 93940
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- **CALIFORNIA CATTLEMEN’S ASSOCIATION**
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- **FIENDS OF THE RIVER**
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- **VENTANA WILDERNESS ALLIANCE**
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