

DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>

July 21, 1999

Mr. Rob Rossi
750 Pismo Street
San Luis Obispo, California 93401

Dear Mr. Rossi:

Santa Margarita Ranch
San Luis Obispo County

Department of Fish and Game personnel have recently received information regarding proposed activities on the Santa Margarita Ranch. Proposed activities include installation of a 3,000-acre vineyard located on four tributaries to the Salinas River Watershed. These tributaries are Santa Margarita Creek, Yerba Buena Creek, Trout Creek, and Rinconada Creek.

Water availability is a critical issue for people and public trust resources. The Department's mandate is to assure adequate water availability to ensure that there will be viable healthy streams in the future. Therefore, any project which directly, or indirectly, diverts water from streams, must demonstrate that water is available, especially during the drier months and years.

Your proposal, viticulture, has the potential to significantly impact stream flow in each of the listed tributaries. Of particular concern at this time is water availability. As the Agency that holds the State's fish and wildlife resources in trust for the people, the Department is responsible for protecting instream flow to maintain streams, riparian vegetation, fish, amphibians, and wildlife in a healthy condition. There are several sensitive species in Trout and Rinconada Creeks including the South-Central California Coast steelhead (*Oncorhynchus mykiss*) and the California red-legged frog (*Rana aurora draytonii*) which are listed as threatened under the Federal Endangered Species Act of 1973. Therefore, the Department desires information on water availability and whether the wells are hydrologically connected to the listed tributaries, thereby depleting the streamflow in the tributaries.

Enclosed is a draft copy of water use availability data requirements, prepared by Department's Senior Engineering Geologist/Hydrologist, Mr. Kit Custis. This draft, although

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still undergoing peer review, helps detail the kind of information the Department requires when water availability is an issue. This data will then assist the Department in our determination of impacts prior to initiation of the project.

If the wells are depleting streamflow to the listed tributaries, then you need to apply for an appropriative water right through the State Water Resources Control Board. If you are transporting the underflow of the listed tributaries to an adjacent drainage for irrigation or other uses, an appropriative water right is needed. Also, an appropriative water right is required if you construct or enlarge an existing reservoir which will store water for more than 30 days. An appropriative water right permit must be issued prior to the initiation of your project. The Department is prepared to file a complaint with the State Water Resources Control Board to follow through with actions if we determine that any of the above conditions exist and that appropriate water rights permits have not been obtained. Standard Department terms and conditions on appropriative water rights may include:

1. Limiting diversion to the wet months (December to March);
2. Maintaining a minimum bypass of 60 percent of the average annual unimpaired watershed production above the point of diversion;
3. Construction of a passive diversion designed to insure that instream flow is maintained;
4. Designation of a maximum number of acre feet to be used annually;
5. Limiting maximum rate of diversion;
6. Allowing access by Department personnel to monitor compliance.

The Department has direct jurisdiction under Fish and Game Code Section 1601-1603 in regard to any proposed activities that would divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake designated by the Department. A June 29, 1999 declaration from Mr. Fred Collins reports that you have recently drilled a well near Trout Creek which hit water flowing at over 1,500 gallons per minute at a depth of 12 to 15 feet. The total depth of this well is 60 feet. Due to the large volume of water reached at a relatively shallow depth, it would seem that this well is hydrologically connected to the underflow of Trout Creek. The total water needs of the proposed 3,000 acres of vineyards is estimated at between 3,000- and 5,000-acre feet depending on the spacing of the vines and needs for frost protection. Based on the

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above information, it appears that some wells supplying irrigation water to the proposed 3,000 acres of vineyards would be substantially diverting the natural flows of streams and that it will be necessary to obtain a streambed alteration permit under Section 1603 of the Fish and Game Code. Due to a recent court order, the issuance of this permit is subject to the California Environmental Quality Act (CEQA) and a permit cannot be issued until the appropriate CEQA document has been prepared. Work cannot be initiated until a streambed alteration permit is executed.

CEQA requires a mandatory finding of significance if a project will adversely affect the numbers and distribution of a threatened species. Given the fact that steelhead and red-legged frogs probably inhabit Trout and Rinconada creeks and that water withdrawals could lower the water levels in these creeks, a possible adverse impact to these species exist. If these impacts surpass the threshold for a mandatory finding of significance, an Environmental Impact Report (EIR) would be required for your project. The EIR will need to be prepared and approved prior to the Department issuing a streambed alteration permit. We understand that surveys and habitat assessments have been completed. Any documentation on your proposed activities as they relate to the biological resources would be valuable in determining impacts and identifying possible mitigation measures. You should also enter into consultation with the National Marine Fisheries Service and U. S. Fish and Wildlife Service regarding the potential take of Federally-listed species which is prohibited under the Federal Endangered Species Act.

Department personnel are available to work with you regarding this project. If you have any questions regarding our comments, please contact Mr. Chuck Marshall, Associate Fishery Biologist, at (805) 237-9538; or Mr. Carl Wilcox, Environmental Services, Supervisor, at (707) 944-5525.

Sincerely,

COPY ORIGINAL SIGNED BY
BRIAN HUNTER

Brian Hunter
Regional Manager
Central Coast Region

Enclosure

cc: See Next Page

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cc: Mr. Kit Custis
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