

: Carmel River - Las Garzas Creek - Steelhead - CSPA Action
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Organization: CSPA
To: Large CSPA email distribution and posted to the Internet.

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State of California

Before the State Water Resources Control Board

Water Rights Application No. A029282

Petition T030980

Water Rights Application No. 29282

Rancho San Carlos Partnership, Applicant

Las Garzas Creek, Tributary to Carmel River thence Pacific Ocean

County of Monterey

Public Trust Protest by the
California Sportfishing Protection Alliance

Pursuant to the State Water Resources Control Board's regulations and state statutes, the California Sportfishing Protection Alliance hereby file a public trust protest against WR Application A029282 and T030980 on environmental and legal grounds as follows:

Water Right Application A029282

The applicant proposes to divert water from Las Garzas Creek, a tributary to the Carmel River. The amount of water applied for is 250 acre-feet per annum at Moore's Lake and at the wetlands adjacent to Moore's Lake. Water is proposed to be used for irrigation, stockwatering, wildlife enhancement, recreation, and dust control. The applicant has requested to divert water from January 1 to April 30 annually. The diversion and place of use are located within the County of Monterey.

Petition T030980

The applicant proposes to divert water from Las Garzas Creek, a tributary to the Carmel River. The amount of water applied for is 250 AFA. Water will be used irrigation, stockwatering, dust control, road construction and maintenance, fire protection, and wildlife enhancement. The applicant has requested to divert water from November 1, 1999 to April 30, 2000. The diversion and place of use are located within the County of Monterey.

Background Information

On June 24, 1988, Rancho San Carlos Partnership, the applicant, filed Application 29282 with the State Water Board seeking rights to collect 250 acre-feet of storage in an existing instream pit-type reservoir called Moore's Lake. Because Las Garzas Creek is tributary to the Carmel River, actions were deferred by the State Water Board until the issuance of Board Decision 1632 and Board Order WR 95-10. However, the State Water Board has continued to suspend actions on pending water right applications in the Carmel River Watershed pending resolution of environmental issues and project modifications. The California Sportfishing Protection Alliance was a direct party to Board Decision 1632 and Board Order WR 95-10, and participated at the State Water Board hearings in about 1992.

As a condition for approval of the Santa Lucia Preserve, the Environmental Impact Report, required Moore's Lake to be emptied, dredged and all non-native species removed. The Rancho San Carlos Partnership, after obtaining a Lake and Streambed Alteration Agreement from the Department of Fish and Game, obtaining a water quality certification from the State Water Board, and determining that a U.S. Army Corps permit was not necessary, agreed to bypass the natural flows of Las Garzas around the reservoir site, and drain and dredge the reservoir. Rancho San Carlos Partnership's plan was to complete the rehabilitation of Moore's Lake by the end of the summer and refill the reservoir with winter runoff.

According to the Division of Water Rights, as a result of a public trust complaint filed by the California Sportfishing Protection Alliance with the State Water Board, Rancho San Carlos Partnership was advised that their limited pre-1914 and decreed rights did not provide a sufficient basis of right to refill Moore's Lake. However, because the reservoir is an onstream pit type reservoir and the bypass system is not sufficiently large to bypass all winter flows, Rancho San Carlos Partnership cannot stop the filling of Moore's Lake. Therefore Rancho San Carlos Partnership requested a temporary permit (T030980) for the right to initially refill Moore's Lake until the requested permanent water right (A029282) was considered for approval by the State Water Board, which would allow continued retention and future collection of the state's waters to storage at Moore's Lake.

Water collected to storage by Rancho San Carlos Partnership will be used for irrigation of 80 acres of pasture, domestic irrigation of 3 acres of lawn, stockwatering of 300 cattle, recreational, wildlife enhancement, and dust control throughout the property.

On July 6, 1995, the State Water Board adopted Decision 1632 regarding the New Los Padres Project of the Monterey Peninsula Water Management District. In D-1632, the State Water Board determined that water is only available for appropriation within the Carmel River Watershed from January 1 to April 30 of each year, with exception of uses identified in Table 13 of D-1632. Application 29282 is a Category 1 filing, which states that applications seeking to divert water during the season of availability, January through April 30 of each year would be approved. Applications to appropriate water within Category 1 are not subject to D-1632 and the State Water Board has determined that water is available for appropriation.

Statement of Facts and Reasons for Public Trust Protest

1. The Carmel River and its tributaries sustain steelhead species and their habitat (all life stages). Las Garzas Creek sustains steelhead species and their habitat (all life stages).
2. Carmel River steelhead were listed as threatened under the protection of the provisions of the federal Endangered Species Act following Board Decision 1632 and Board Order WR 95-10.
3. The CSPA public trust complaint against Rancho San Carlos Partnership was filed because of a kill of threatened Carmel River steelhead in Las Garzas Creek caused by Rancho San Carlos Partnership operation and management of Moore's Lake.
4. The Complaint Unit of the Division of Water Rights recently made recommendations concerning the management and the operation of Moore's Lake in conjunction with public trust complaints filed by the CSPA and another party. The State Water Board has not yet adopted the staff recommendations.
5. The Carmel River sustains federally listed and endangered California Red-Legged Frog species and their habitat. It is likely Las Garzas Creek did sustain and may continue to sustain endangered California Red-Legged Frog species and their habitat (all life stages).
6. Board Decision 1632 and Board Order WR 95-10 did not provide any specific mandatory protection measures for threatened and federally listed steelhead in the Carmel River because threatened steelhead were not listed until after the decision and order were adopted by the State Water Board. Since steelhead were listed as threatened under protection of the federal ESA, the State Water Board has not amended any of its

decision and orders to protect threatened Carmel River steelhead from jeopardy, harm, and harassment from water diversions in the Carmel River watershed.

7. Application A029282 is being treated as a Category 1 filing by the State Water Board and its staff. Applications within this category are not subject to Board Decision 1632. Applications under Category 1 are allowed to appropriate water from January 1 to April 30 of each year during any water year type. Category 1 should be amended by the State Water Board not to allow diversions and uses of water during dry, and critically dry water years to protect threatened Carmel River steelhead and their habitat (all life stages).

8. Applications A029282 and T030980 should be held in abeyance until Board Decision 1632 has been amended to include specific terms and conditions that protect Carmel River threatened steelhead species and their habitat (all life stages) from being jeopardized, harmed, and harassed from existing and proposed diversions of the Carmel River and its tributaries.

9. Rancho San Carlos Partnership should formally consult with the U.S. National Marine Fisheries Service concerning Applications A029282 and T030980, and obtain the measures necessary to protect threatened steelhead species from being destroyed, harmed, and harassed that migrate into Las Garzas Creek for spawning and rearing purposes.

10. Rancho San Carlos Partnership should formally consult with the U.S. Fish and Wildlife Service concerning Applications A029282 and T030980, and obtain from that agency the measures necessary to protect endangered California Red-Legged Frog species and their habitat (all life stages) in the Las Garzas Creek Watershed.

11. Rancho San Carlos Partnership should not be allowed to use any water from Moore's Lake and from the Las Garzas Creek Watershed until they consult with the U.S. National Marine Fisheries Service and obtain recommended protection measures from that agency to keep steelhead in good condition at all times in Las Garzas Creek below Moore's Lake. Said recommendation from the U.S. National Marine Fisheries Service should be incorporated into the terms and condition of any permit issued by the State Water Board for Applications A029282 and T030980.

12. Rancho San Carlos Partnership should be required by the State water Board to install and maintain full time gauging devices that measures reservoir levels at Moore's Lake, and also measures flow being released from Moore's Lake into Las Grazas Creek. All diversions by Rancho San Carlos Partnership from the Las Garzas Creek Watershed should also be required to have fulltime measuring devices.

13. During the interim period the natural flows of Las Garzas Creek should be bypass around the reservoir by Rancho San Carlos Partnership until such time the U.S. National Marine Fisheries Service submits steelhead protection measures to the State Water Board for Application A029282, and the Board approves said application. In the event Rancho San Carlos Partnership cannot obtain protection measures for Las Garzas Creek from the U.S. National Marine Fisheries Service during the proposed diversion season ending April 30th, T030980 should be delayed until such time that Rancho San Carlos Partnership has obtained said recommendations from the U.S. National Marine Fisheries Service to protect Carmel River threatened steelhead from being jeopardized, harmed, and harassed in Las Garzas Creek.

14. The public notice for said applications was November 19, 1999. The deadline date for filing formal protests is December 8, 1999 (19 days excluding weekends and holidays). The public notice was noticed prior to the four day Thanksgiving Holidays. The notice was signed by Jerry Johns, Asst. Chief, Division of Water Rights. The Division of Water Rights public notice of said application was too short, unreasonable, and not in the public interest. Said public notice should be noticed again to serve the public process rights of the public who are concerned about the Carmel River.

15. The CSPA public trust protests is based on: (a) Common Law Public Trust Doctrine; (b) California Fish and Game Code 5937; (c) Article X, Section 2 of the California Constitution; (d) the provisions of the federal Endangered Species Act; (e) the provisions of the federal Clean Water Act; (f) California Water Code; (g) California Environmental Quality Act; and (h) other statues and regulations.

Under What Conditions May This Public Trust Protest Be disregarded or Dismissed?

A. Under no conditions SHOULD the CSPA public trust protest be disregarded or dismissed unless an agreement is reached between the CSPA, Carmel River Steelhead Association, Rancho San Carlos Partnership, and the State Water Board's staff in conjunction with recommendations by the U.S. National Marine Fisheries Service.

B. Also as stated in this formal public trust protest.

A copy of said public trust protest is being forwarded to the agent for Rancho San Carlos Partnership as shown below.

Respectfully Submitted

SIGNED BY BOB BAIOCCHI

Robert J. Baiocchi, Consultant
For: California Sportfishing Protection Alliance
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Dated: December 8, 1999

cc: Mr. Brian Coats, Engineer
Application and Petition Unit
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000
By Fax on December 8, 1999 before the deadline time
Also by first class mail

Rancho San Carlos Partnership
c/o Camp Dresser & McKee, Inc.
c/o Mr. Craig Von Bargen
100 Pringle Avenue, Suite 300
Walnut Creek, CA 94596
By First Class Mail

Mr. Jim Bybee, Supervisor
U.S. National Marine Fisheries Service
777 Sonoma Avenue, Room 325
Santa Rosa, CA 95404
By Fax on December 8, 1999
Also By First Class Mail

Mr. Clive Sanders, Agent
Dr. Roy Thomas, President
Carmel River Steelhead Association
P.O. Box 1183
Monterey, CA 93940
By E-Mail

Mr. Jim Crenshaw, President
CSPA Board Members and Consultants
1248 East Oak Avenue, Suite D
Woodland, CA 95695
By E-Mail

Interested Parties (Statewide By E-Mail)

