



State Water Resources Control Board



Linda S. Adams
Secretary for
Environmental Protection

Division of Water Rights
1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5300
P.O. Box 2000 ♦ Sacramento, California 95812-2000
FAX: 916.341.5400 ♦ www.waterboards.ca.gov/waterrights

Arnold Schwarzenegger
Governor

**PROPOSED
MITIGATED NEGATIVE DECLARATION**
Pursuant to Section 21092

Public Resources Code

To: Office of Planning & Research State Clearinghouse P.O. Box 3044 Sacramento, CA 95812-3044	From: State Water Resources Control Board Division of Water Rights P.O. Box 2000 Sacramento, CA 95812-2000
--	---

PROJECT TITLE: Application to Appropriate Water **APPLICATION:** 30946

APPLICANT: Clear Ridge Mutual Water Association
c/o Carolyn Shearer
P.O. Box 63
Big Sur, CA 93920

PROJECT DESCRIPTION:

Clear Ridge Mutual Water Association, Inc., (Association) serves 42 properties located on Pfeiffer Ridge and Clear Ridge in the Big Sur area of Monterey County. The Association's source of water is a 36-foot deep well situated approximately 35 feet from the southwest bank and 80 feet from the center line of the Big Sur River in Monterey County. From the time the well was originally developed in 1972, the Association's right to divert water was based on the theory that the water appropriated was percolating groundwater such that, under California law, a water right permit was not required. On March 9, 1999, the (State Water Resources Control Board (State Water Board), Division of Water Rights (Division) determined that the Association's well was extracting underflow of the Big Sur River and that a water right permit was in fact required.

As a consequence, on July 5, 1999, the Association filed water right Application 30946 with the Division. The Application, as amended, requests the right to appropriate up to a total of 42 acre feet per annum (afa) at a rate not to exceed 0.058 cubic feet per second (cfs), during the season from January 1 through December 31, from Big Sur Underflow, tributary to the Pacific Ocean. Prior to amendment, the Application had requested a total of 140 afa. The proposed purposes of use are domestic and fire protection.

The Association service area is both within and outside the watershed area of the Big Sur River. Residences west of Pfeiffer Ridge and along Clear Ridge are in drainage basins that empty into Sycamore Canyon or drain directly to the Pacific Ocean. Seven Association properties east of Pfeiffer Ridge are within the Big Sur River watershed. No new water facility construction is proposed as part of this project. The application seeks to recognize a water appropriation system in operation since 1972 which now serves 38 residences. Four additional parcels within the service area are vacant although three have existing water meters. Up to 4 new residences could be added, and the system could serve property upgrades (caretaker units, vacation homes converted to full time residences).

California Environmental Protection Agency

DETERMINATION: The Division has determined that the above-proposed project will have a less-than-significant effect on the environment for the reasons specified in the attached Initial Study.

PERMIT CONDITIONS: Water to be appropriated from Big Sur River Underflow in Monterey County. The POD (point of diversion) will continue to be located North 353,729N and 1,172,065 East feet by the California Coordinate System of 1927, within the NW ¼ of NW ¼, Section 24, T19S, R1E, MDB &M. Water will be diverted during the period of January 1 of through December 31 of each year. The total amount diverted annually shall not exceed 42 afa. The purpose of use is domestic and fire protection. The place of use will be within the service area of Clear Ridge Mutual Water Association, containing approximately 835 acres within Sections 23, 24, 25, 26, 35 and 36 and located within the County of Monterey.

PERMIT TERMS:

STANDARD TERMS

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a maximum instantaneous rate of 0.058 cubic foot per second to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this permit shall not exceed 42 acre-feet per year.
2. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2020.
3. Permittee shall document Big Sur River flows to meet bypass requirements by monitoring USGS Stream Gage #1114300 in Pfeiffer-Big Sur State Park. If this gage is rendered inoperable, permittee shall be responsible for repair and maintenance of said gage unless/until another agency or party accepts responsibility. Permittee shall implement all provisions of the Application A030946 flow bypass compliance plan dated June 10, 2008 on file with the Division.
4. The Permittee shall obtain all necessary federal (including United States Army Corps of Engineers Section 404), state and local agency permits required by other agencies prior to construction and diversion of water. Copies of such permits and approvals shall be forwarded to the Deputy Director for Water Rights.
5. Based on the information contained in the Division's files, riparian water has not been used on the place of use. Diversion of water is not authorized under this permit if in the future the Permittee diverts water under riparian right. With the Deputy Director for Water Right's approval, Permittee may use water under basis of riparian right on valid lands within the authorized place of use, provided that Permittee submits reliable evidence to the Deputy Director for Water Rights quantifying the amount of water that Permittee likely would have used under the basis of riparian right absent the appropriation authorized by this permit. The Deputy Director for Water Rights is hereby authorized to approve or reject any proposal by Permittee to use water under the basis of riparian right on the place of use authorized by this permit.

6. Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars and pestles) and locally darkened midden soils containing some of the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and split lumber; and structure and feature remains such as building foundations, privy pits, wells and dumps; and old trails. The Deputy Director for Water Rights shall be notified of the discovery and a professional archeologist shall be retained by the Permittee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Deputy Director for Water Rights for approval. Project-related activities shall not resume within 100 feet of the find until all approved mitigation measures have been completed to the satisfaction of the Deputy Director for Water Rights.

7. If human remains are encountered, then the Applicant shall comply with Section 15064.5 (e) (1) of the CEQA Guidelines and the Health and Safety Code Section 7050.5. All project-related ground disturbance within 100 feet of the find shall be halted until the county coroner has been notified. If the coroner determines that the remains are Native American, the coroner will notify the Native American Heritage Commission to identify the most-likely descendants of the deceased Native Americans. Project-related ground disturbance, in the vicinity of the find, shall not resume until the process detailed under Section 15064.5 (e) has been completed and evidence of completion has been submitted to the Deputy Director for Water Rights.

8. Permittee shall install and maintain devices satisfactory to the Division to measure the instantaneous rate of diversion and cumulative quantity of water diverted under this permit. A record of such measurements shall be maintained by the permittee, and made available to interested parties upon reasonable request. This flow and diversion data shall be maintained for the life of the project and submitted to the Division with the Progress Report by Permittee and to the California Department of Fish and Game upon reasonable request.

SPECIAL TERMS

9. The rate of diversion shall be restricted during low Big Sur River flows to less than 1% of the gauged flow measured by the United States Geological Survey stream gauge 11143000 located in Pfeiffer-Big Sur State Park, in accordance with the Application A030946 flow bypass compliance plan dated June 10, 2008 on file with the Division. When the gauged flow is equal to or below 3 cfs, the entire flow of the Big Sur River will be bypassed and no water diverted under this permit. Permittee shall also limit diversions as follows:
 - o When the gauged flow is greater than 3 cfs and less than or equal to 4 cfs, the diversion shall not exceed a maximum 24 hour average rate of 0.03 cfs.
 - o When the gauged flow is greater than 4 cfs and less than or equal to 5 cfs, the diversion shall not exceed a maximum 24 average hour rate of 0.04 cfs.

- When the gauged flow is greater than 5 cfs and less than or equal to 6 cfs, the diversion shall not exceed a maximum 24 hour average rate of 0.05 cfs.
 - When the gauged flow is 6 cfs and greater, the well diversion rate will be the pump's maximum capacity of 0.058 cfs.
10. In order to reduce noise impacts, the pumps and pump house shall be insulated with noise reduction materials within 120 days of permit issuance.
11. The State Water Board reserves jurisdiction over this permit to modify, delete, or add minimum flow requirements or related criteria for the protection of fish and wildlife and the maintenance of recreation in the Big Sur River should (1) additional fishery studies be conducted in the Big Sur River, or (2) unforeseen adverse impacts occur to the fishery or recreation in the Big Sur River. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.
12. To protect instream resources, any and all diversion shall occur from the existing subterranean well. There shall be no direct diversion from surface water flow of the Big Sur River under the exercise of any basis of right. Any device or contrivance which prevents, impedes, or tends to prevent or impede the passage of aquatic resources upstream or downstream shall be prohibited as a means to divert or store water.

MANDATORY TERMS

13. The amount authorized for appropriation may be reduced in the license if investigation warrants.
14. Progress reports shall be submitted promptly by Permittee when requested by the State Water Board until a license is issued.
15. Permittee shall allow representatives of the Division and other parties as may be authorized from time to time by the Division, reasonable access to project works to determine compliance with the terms of this permit.
16. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of Permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate

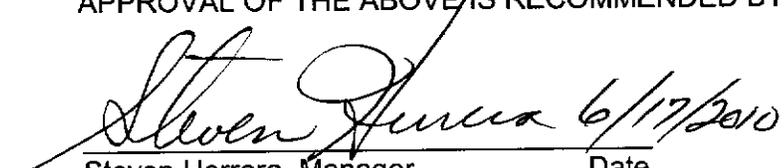
agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by Permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

17. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to Permittee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.
18. This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, Permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.
19. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code section 1605.
20. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the Department of Fish and Game and the Permittee is filed with the Division. Compliance with the terms and conditions of the agreement is the responsibility of the Permittee. If a stream or lake agreement is not necessary for this permitted project, the Permittee shall provide the Division a copy of a waiver signed by the Department of Fish and Game.

Contact Person: Mitchell Moody	Telephone: (916) 341-5383 Email: mmoody@waterboards.ca.gov
--------------------------------	---

APPROVAL OF THE ABOVE IS RECOMMENDED BY:


Steven Herrera, Manager Date
Water Rights Permitting Section

APPROVED:

Victoria A. Whitney, Chief Date
Division of Water Rights