

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

DIVISION OF WATER RIGHTS

In the Matter of Water Right Application A033073

The Marshall Ranch LLC

ORDER ISSUING WATER RIGHT PERMIT

SOURCE: Two Unnamed Streams tributary to Redwood Creek thence the
South Fork Eel River thence the Eel River

COUNTY: Humboldt

WHEREAS:

1. On September 19, 2019, The Marshall Ranch LLC (Applicant) filed a water right application with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) to appropriate water from the South Fork Eel River stream system in Humboldt County. As originally filed, water right application A033073 seeks a water right authorizing:
 - a. Diversion of up to 30.85 acre-feet of water per year (afy), at a rate not to exceed 0.49 cubic foot per second (cfs), to off-stream storage from a single point of diversion on Redwood Creek tributary to the South Fork Eel River;
 - b. A season of diversion from December 1 of each year to April 30 of the succeeding year; and
 - c. Use of the diverted water for fish and wildlife preservation and enhancement in Redwood Creek and the reservoir as well as incidental domestic, stockwatering, recreational, and fire protection uses.
2. Water diversions in the Redwood Creek watershed have contributed to a loss in rearing habitat for coho salmon (*Oncorhynchus kisutch*) and steelhead (*O. mykiss*) due to low streamflow during late summer and early fall. The right requested by the application will allow the right holder to divert water to storage during higher winter flows from December 1 of each year to April 30 of the succeeding year. A significant portion of the stored water would then be released during the critical low-flow months in late summer and early fall to

provide water for instream fishery needs. Stored water would also be used for incidental domestic, stockwatering, and fire protection uses.

3. On September 10, 2020, the State Water Board provided public notice of the application. Protests were received from the California Department of Fish and Wildlife, National Marine Fisheries Service, Cecelia Lanman, and James and Joan Courtois. All of the protests have been resolved or withdrawn.
4. On October 5, 2021, the applicant filed a minor change request to modify the application by changing the point of diversion, reducing the storage amount and diversion rate, and changing the place of use for instream uses. The minor change was approved by the State Water Board on June 7, 2022. As changed, the water right application seeks a water right authorizing:
 - a. Diversion of up to 20 afy, at a rate not to exceed 0.49 cfs, to off-stream storage from two points of diversion located on two unnamed streams tributary to Redwood Creek thence the South Fork Eel River;
 - b. A season of diversion from December 1 of each year to April 30 of the succeeding year; and
 - c. Use of the diverted water for fish and wildlife preservation and enhancement in Redwood Creek and the reservoirs as well as incidental domestic, stockwatering, and fire protection uses.
5. The State Water Board has determined that there is unappropriated water available in the two unnamed streams to serve the right requested by the application. State Water Board staff reviewed the water availability analysis that was prepared and submitted by the Applicant's agent. Based on the analysis, water is available to serve the right requested by the application without injury to prior rights and in consideration of the amounts of water required for preservation and enhancement of downstream fish and wildlife resources.
6. Under the California Environmental Quality Act (CEQA), Humboldt County is the lead agency for preparation of environmental documentation for the application. On January 6, 2022, Humboldt County adopted a Mitigated Negative Declaration (MND) (State Clearinghouse Number 2019109088) for the project. Humboldt County issued a Notice of Determination (NOD) on February 2, 2022 and issued an addendum to the MND on February 18, 2022. As a CEQA responsible agency, the State Water Board must consider the environmental documentation prepared by the lead agency and any other relevant evidence in the record and must reach its own conclusions on whether and how to approve the project involved. (Cal. Code Regs., tit. 14, § 15096, subd. (a).). The State Water Board has considered the MND and addendum in deciding whether to approve the application. Changes and alterations have been required in and incorporated into the project which avoid or substantially lessen the significant environmental effects on environmental resources within the State Water Board's purview, as

identified in the final EIR. (See Cal. Code Regs., tit. 14, §§ 15091, subd. (a)(1); 15096, subd. (h).) The State Water Board will issue an NOD within five days of the date of this order.

7. The State Water Board prepared a MMRP which specifies implementation, monitoring, and reporting on the mitigation measures for the protection of resources within the State Water Board's purview (Attachment 2). Compliance with these measures is an enforceable term within this order. Adoption of mitigation measures described in the MMRP avoid or significantly minimize all of the significant impacts under the State Water Board's purview to a less than significant.
8. In addition to any obligation the State Water Board may have under CEQA, the State Water Board has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346, 658 P.2d 709].). Division staff considered potential effects to public trust resources as documented in the memorandum titled Staff Consideration of Potential Effects to Public Trust Resources Caused by Approval of Application A033073, on file with the State Water Board. Division staff concluded that with the conditions identified in the aforementioned memorandum, actions associated with the application will not result in adverse effects to public trust resources as long as the protective measures described in the aforementioned memorandum are implemented.
9. Pursuant to Resolution 2012-0029, the State Water Board has delegated the authority to administer the State Water Board's water rights program to the Deputy Director for Water Rights, who has redelegated this authority pursuant to a memorandum dated June 6, 2022.

NOW, THEREFORE, IT IS ORDERED:

1. Permit 21427 is issued for application A033073 subject to the conditions included therein.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:
AMANDA MONTGOMERY FOR:

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: June 16, 2022