

MINUTE ITEM

This Calendar Item No. 21  
was approved as Minute Item  
No. 21 by the State Lands  
Commission by a vote of 3  
to 0 at its 5-27-76 MINUTE ITEM  
meeting.

5/27/76  
GDG

21. EXTENSION OF DEFERMENT TO PROCESS THE FILED APPLICATION FOR PUBLIC AGENCY PERMIT, SUBMERGED LAND IN DONNER LAKE, NEVADA COUNTY; TRUCKEE-DONNER PUBLIC UTILITY DISTRICT - W 20389.

During consideration of Calendar Item 21 attached, Mr. James F. Trout, Manager, Land Operations, explained the background of the project, and the reasons for extending the lease application. Mr. Trout stated that at the last meeting the Commission asked why the Commission should permit the continued occupancy of the bed of the lake while the alternate sources of groundwater are investigated. In addition, why shouldn't the Commission cancel the application, and if at some future time the pipeline is needed, the District could then reapply. In summary, Mr. Trout stated that the real issue is whether or not there is any benefit to the public for continuing to defer action on the lease application.

Mr. Steve Grumer, General Counsel representing Truckee-Donner Utility District, appeared in support of the extension. Mr. Grumer stated that the District feels there might be alternate groundwater sources. However, he stated that until those sources are available, the loss of the water right would be of significant importance to the community. He also pointed out that the phrase on page 64 of the item "In a special election" was inaccurate because a special election had not been held. Mr. Trout concurred with Mr. Grumer, and the phrase was then removed from the item.

Ms. Marge Adkerson, representing Donner Lake Plug the Pipeline Committee, appeared in opposition to the item. Ms. Adkerson stated she did not feel the District had been consistent and did not warrant an extension.

Mr. Harold Christian, representing Donner Lake Plug the Pipeline Committee, appeared in opposition to the item. Mr. Christian requested that the Commission reject the subject request because there are sufficient groundwater sources to meet the needs of the District.

Mr. Dan Cook, District Engineer for the Truckee-Donner Public Utility District, appeared in support of the item. He stated that until they are reasonably assured they can actually tap the groundwater basin productively, the request for an extension should be granted.

Commissioner Kenneth Cory asked the staff if the Commission did not grant the extension, what would be the legal ramifications. Mr. N. Gregory Taylor, Assistant Attorney General, responded by saying that it is his understanding that not approving the item would not terminate the application; formal action would have to be taken to terminate it.

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He stated the Commission has a specified period of time set by statute in which to approve the lease application. However, if it does not meet the time period, the proposal does not automatically terminate; it would still be open.

Mr. Cook raised the issue of the draft Environmental Impact Report which addresses both the pipeline on the State lands and the water right. Mr. Taylor stated the Commission must take final action on the pending EIR which is presently not before the Commission. Therefore, one more meeting is needed to conclude the EIR process. At that time the Commission could terminate the lease.

Mr. Taylor indicated it is his understanding the purpose of the item is that due to the considerable amount of staff time which has been spent on the project with very little progress, the staff is trying to maximize its time. The item was used as a vehicle to bring it to the attention of the Commission and to get clarification from the District.

Mr. Adolph Moskovitz, attorney representing Dart Resorts, appeared in support. Mr. Moskovitz requested the Commission to approve the extension.

Ms. Pat Sutton, member of the Board of Directors of the Truckee-County Public Utility District, appeared in opposition to the item. Ms. Sutton requested the Commission only grant an extension until June 30, with prescribed conditions to be met by the District. Ms. Sutton's written testimony is on file with the Division.

After all testimony was received, Commissioner Cory moved that the Commission place on Calendar for the July meeting termination of the lease application. He stated this would allow the District to return with a specific alternative proposal, or, failing that, the Commission could terminate the application, thereby requiring the District to reapply for a new lease. Commission-alternate Richard Thompson seconded the motion.

By a vote of 3-0, the following resolution was adopted:

THE COMMISSION AUTHORIZES THE STAFF OF THE STATE LANDS DIVISION TO PLACE ON CALENDAR FOR THE JULY COMMISSION MEETING TERMINATION OF THE APPLICATION FROM THE TRUCKEE-DONNER PUBLIC UTILITY DISTRICT FOR A PUBLIC AGENCY PERMIT ON SUBMERGED LAND IN DONNER LAKE, NEVADA COUNTY.

Attachment:  
Calendar Item 21 (4 pages)

CALENDAR ITEM  
21.

5/76  
W 20389  
GDG

EXTENSION OF DEFERMENT TO PROCESS THE FILED  
APPLICATION FOR PUBLIC AGENCY PERMIT

APPLICANT: Truckee-Donner Public Utility District  
Post Office Box 309  
Truckee, California 95734

LAND TYPE AND LOCATION: A parcel of submerged land in Donner Lake at  
the east end near Donner Creek, Nevada County.

LAND USE: One existing 24-inch pipeline extending approx-  
imately 690 feet into Donner Lake for the  
purpose of diverting up to 4,000 acre-feet of  
water annually by the year 2020.

BACKGROUND: On May 25, 1972, staff first received a written  
inquiry from the applicant's consulting engineer,  
Cook Associates at Oroville, California, re-  
questing knowledge of the requirements to in-  
stall and maintain the subject facility. By  
Division notice dated July 20, 1972, Cook  
Associates was advised the project would re-  
quire a Commission permit.

Some months later, but less than a year, staff  
gained knowledge that construction of the exist-  
ing intake facility was underway and subsequently  
learned in making a physical inspection of the  
site on May 24, 1973, that the pipeline was  
completely installed on State land.

Dart Industries, Inc., a California and Delaware  
Corporation, did cause to be constructed, as  
it presently exists, a water intake system com-  
posed of a pumping station on the upland and  
approximately 720 feet of 24-inch steel pipe  
which extends from the pumping station into  
the northeast corner of Donner Lake. From the  
intake pump, the pipe is buried for a distance  
of approximately 320 feet into the lake from  
which point the remaining pipe lies on the  
surface of the lakebed. The shallowest portion  
of the unburied pipe is approximately 4 feet  
below the water surface when the level of the  
lake is at the sill of the lowest gates of  
the dam on Donner Creek. Installation of the  
system occurred during March and April, 1973,  
when the lake was at its low level.

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On June 2, 1973, the office of the Attorney General filed an action in ejectment for damages and removal of trespasses against Dart Industries, Inc. and the applicant. The Commission concurred in the action of the office of the Attorney General in Minute Item No. 18 dated July 26, 1973.

In August 1973, the parties to the action agreed that the State would not further proceed with the lawsuit should Truckee-Donner Public Utility District seek appropriate authorization from the Commission for the existing purprestures.

The applicant did file an application on October 19, 1973, and a lengthy Draft Environmental Impact Report (DEIR) was prepared and subsequently circulated by the State Clearinghouse. Acting in the capacity of lead agency, staff conducted a public hearing in Truckee, September 24, 1974, to receive the public comment relative to the project as described in the DEIR. The public objection at the hearing was overwhelming. Numerous pieces of correspondence objecting to the project have been received by staff which substantiate the public disapproval of the project from its inception.

The primary point raised at the hearing was why it was necessary to use Donner Lake as a water source when alternate ground water sources might be available. The Commission was advised in a Status Report on the Public Hearing, referenced in Minute Item No. 22, dated October 3, 1974, that the DEIR would be more reliable if the results of a ground water study were known, and that staff would take no further action until such a study was made available and analyzed.

A ground water study of the availability of alternate areas, sites and sources within the Truckee ground-water basin, dated February 14, 1975, was made for the applicant by Hydro-Search, Inc., of Reno Nevada (John V. A. Sharp, Ph.D., Principal Hydrologist, Registered Geologist No. 1416).

The findings of the study indicate that there are possible alternative sources of ground water for this project. Staff called a meeting March 5, 1975, with representatives of

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applicant, Dart Industries, Inc. (Dart Resorts) and State Water Resources Control Board, Water Rights Division, to discuss the study and to determine the future course of action relative to the applications filed with the State Lands Commission and the Water Resources Control Board.

In correspondence dated March 26, 1975, applicant requested, and staff subsequently granted, a 180-day deferment to further process the application for the purpose of enabling applicant and Dart Industries, Inc. (Dart Resorts) to resolve water supply problems arising from executed agreements dated March 19, 1970 and October 15, 1973, by and between applicant and Dart. It was staff's understanding that a solution of these problems would obviate the necessity of further processing this application.

In the Fall of 1974, the Nevada County Grand Jury made an investigation of the proposed taking of water from Donner Lake and expressed in a report dated November 27, 1974, their concern for the protection of the lake's significant environmental values and their disapproval of using Donner Lake as a domestic water source. In a special election on March 4, 1975, voters of the Truckee-Donner Public Utility District rejected the idea of using Donner Lake as a domestic water source.

In a correspondence dated October 14, 1975, applicant again requested, and staff again subsequently granted, a second 180-day extension of the deferment to further process this application. During the first deferment, applicant and Dart held preliminary discussions with the Truckee-Tahoe Airport District, and reached an agreement whereby applicant would acquire the water well owned by the Airport District and integrate it into the domestic supply system. Staff was advised questions of funding, construction and unresolved matters relating to existing agreements required additional time to be resolved.

By letter dated March 30, 1976, applicant requested a third 180-day extension of the standing deferment. This request was made because Dart Resorts is drilling a test well and the applicant would like to have the results of this test before proceeding with the

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application. Staff granted an additional 30-day extension pending a discussion relative to those future actions required to process this application. To effectuate further discussions, the applicant later invited representatives of the State Water Resources Control Board, Department of Real Estate and the Commission to attend a meeting of its Board of Directors, April 19, 1976, in Truckee. Staff did attend the subject meeting and at that meeting staff expressed a willingness to recommend only through July 31, 1976, subject to the further consideration and determination of the Commission.

Salient points to be considered in the further granting of an extension of deferment to process this application appear to be:

1. This is the fourth year of work with this purpresture.
2. Considerable staff time and funds have been expended for this transaction to date; and, further processing of this application will require an extensive amendment of the required environmental documents in order to present and bring current all the findings and facts of the alternatives of the ground water study and other related developments. This and other processing actions would require the expenditure of considerably more staff time and funds on this transaction.
3. The subject ground water study seems to indicate that there are alternative water sources that could be utilized other than Donner Lake.

EXHIBITS: A. Location Map. B. Site Drawing.

IT IS RECOMMENDED THAT THE COMMISSION:

1. GRANT TO TRUCKEE-DONNER PUBLIC UTILITY DISTRICT AN EXTENSION ONLY THROUGH JULY 31, 1976, IN THE PROCESSING OF ITS APPLICATION FOR A PUBLIC AGENCY PERMIT.
2. REQUIRE OF TRUCKEE-DONNER PUBLIC UTILITY DISTRICT A COMPREHENSIVE PROGRESS REPORT OF THE FINDINGS OF THE RESULTS OF THE TEST WELL DRILLING ON OR BEFORE JULY 12, 1976; AND THAT THE REPORT BE REQUIRED TO SET FORTH THE DISTRICT'S INTENDED FUTURE COURSE OF ACTION WITH THIS APPLICATION.