

This Calendar Item No. 21  
was approved as Minute Item  
No. 21 by the State Lands  
Commission by a vote of 5  
0 at its 7-22-76  
meeting.

MINUTE ITEM

7/22/76  
GDG

21. CONSIDERATION OF TERMINATION OF APPLICATION FOR PUBLIC  
AGENCY PERMIT; TRUCKEE-DONNER PUBLIC UTILITY DISTRICT -  
W 20389.

During consideration of Calendar Item 21 attached, Chairman  
Kenneth Cory explained that this item was on the May 27,  
1976, Commission agenda.

Mr. Steve Grumer, attorney representing Truckee-Donner Public  
Utility District, appeared. Mr. Grumer introduced Mr. Jim  
Thompson, attorney, representing Dart Industries; Don Strand,  
Project Manager for Tahoe-Donner; Dan Cook, District Engineer  
for the District; and Paul Hobensack, District Manager.

On behalf of the Truckee-Donner Public Utility District,  
Mr. Grumer requested that the Commission adopt staff recommen-  
dation No. 2 set forth in the subject Calendar Item. He based  
his request on the premise that 1) nobody stands to lose any-  
thing in the event this matter is held in abeyance; and 2)  
progress has been made since the May meeting and a detailed  
plan of action has been prepared. He stated that at the May  
meeting this item was put over to allow them time to come in  
with specific alternative proposals.

At this time, Mr. Grumer introduced Mr. Dan Cook, District  
Engineer. Mr. Cook explained the events which have transpired  
since the May meeting. During Mr. Cook's presentation,  
Chairman Cory advised R. C. Hight, Staff Counsel, that he  
should be keeping in mind how the Commission will preserve its  
options so that it does not inadvertently end up, through some  
detrimental reliance concept, being forced to approve the  
application. Mr. Hight advised that there is an existing  
lawsuit which takes the pipeline into effect, and there is  
also an agreement prohibiting the District from using it  
until the Commission makes a determination as to its use.

Mr. James Thompson, attorney for Dart Industries, appeared.  
He stated that he was present simply to assure the Commission  
that Dart has been consulted in the development of Mr. Cook's  
proposal, and that his client fully concurs in the time  
limits established. He indicated his client strongly supports  
staff recommendation No. 2.

Chairman Cory asked Mr. Thompson if Dart or the District would  
be adversely affected if the Commission approved recommendation  
No. 1. Mr. Thompson responded by saying it would rule out the  
possibility that Donner Lake water would ever be available  
for serving the needs of the District. Other questions were  
raised by Mr. Cory. He then asked N. Gregory Taylor, Assistant  
Attorney General, what the Commission would be giving away by  
allowing the application to stay pending. He asked if the

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Commission would be giving a priority right before some other agency or just before us. Mr. Taylor advised that as far as this Division is concerned, it has a priority right. After a lengthy discussion, Chairman Cory stated that a big concern to him is that the pipeline was illegally installed; therefore, why should the Commission help the District.

Ms. Pat Sutton, elected director of the Truckee-Donner Public Utility District, appeared, requesting the Commission to terminate the application. Ms. Sutton's written statement is on file in the office of the State Lands Commission and by reference made a part hereof.

Ms. Marge Adkerson, Secretary of Plug the Pipeline Committee, appeared in favor of staff recommendation No. 1.

Ms. Patty McClain, appeared in pro per. She advised the Commission that she initiated this entire problem by writing the first letter to Mr. Trout when she served as Secretary for the Donner Lake Property Owners Association. The letter advised Mr. Trout that work was going on during the night. Ms. McClain requested that the Commission approve staff recommendation No. 1.

Mr. Frank D. Beardsley, representing Plug the Pipeline Committee, appeared, and requested that the Commission approve staff recommendation No. 1.

Mr. Bob Christensen, member of the Board of the Truckee-Donner Public Utility District, appeared. He stated his main concern is in resolving the problem.

At this time Commission-alternate Sid McCausland stated it was his understanding that staff recommendation No. 1 would terminate the application, without prejudice. He further stated the law is totally clear on the fact that when the applicant is firm on what he intends to do, he can return and file a permit which will be considered in due course. Mr. McCausland stated he was not comfortable knowing Truckee-Donner wants the State to be a partner in this activity, since most applicants do not like to participate in activities with the State.

Mr. Thompson reappeared and made a closing statement. In summary, he stated his client is seeking the preservation of its rights and the status quo.

Chairman Cory then entertained a motion that the Commission terminate the application. Commissioner Dymally moved that the application be terminated, without prejudice, and Commission-alternate McCausland seconded the motion. At this time, Chairman Cory pointed out to those property owners at Donner Lake who have any kind of structures, wharves, piers, etc. and are not under permit with the State that the Commission will be pursuing lease requirements at the lake.

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Upon motion duly made and carried, the following resolution was approved by a vote of 3-0:

THE COMMISSION AUTHORIZES THE TERMINATION OF PROCESSING AND THE CANCELLATION OF THE APPLICATION, WITHOUT PREJUDICE, OF TRUCKEE-DONNER PUBLIC UTILITY DISTRICT FOR A PUBLIC AGENCY PERMIT FOR A 24" PIPELINE IN THE BED OF DONNER LAKE.

Attachment:

Calendar Item 21 (5 pages)

CALENDAR ITEM

21.

7/76  
W 20389  
GDG

CONSIDERATION OF TERMINATION OF 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 approximately 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, requesting knowledge of the requirements to install and maintain the subject facility. By Division notice dated July 20, 1972, Cook Associates was advised the project would require a Commission permit. Some month later, but less than a year, staff gained knowledge that construction of the existing 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 Delaware Corporation qualified to do business in California, did cause to be constructed, as it presently exists, a water intake system composed 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.

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.

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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 was it 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 applicant, Dart Industries, Inc. (Dart Resorts) and the 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

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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 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 applicant would like to have the results of this test before proceeding with the 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, 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 an extension only through July 31, 1976, subject to the further consideration and determination of the Commission.

At its May 27, 1976 meeting, as agenda Item 21,

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the Commission considered staff's recommendation, heard applicant's presentation of its search for alternate ground water sources, received other related public comments, and subsequently moved to place this matter on the July calendar for consideration of termination of this application. Pursuant to the Commission's specific words of qualification expressed at the May meeting, applicant has provided staff with a specific alternative plan for Commission consideration which is Exhibit "C" on file with the State Lands Commission and by reference made a part hereof.

Staff is currently commencing its fifth year of work with this purpresture. 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 document 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. The subject ground water study seems to indicate that there are alternative water sources that could be utilized other than Donner Lake. No further processing of the environmental document will be required should this application be subsequently terminated.

Salient points of consideration in this matter appear to be:

1. The weighing of the merits of that specific alternative plan provided by applicant designated as Exhibit "C".
2. Determining the necessity of an extension of this application for that period of time necessary to enable applicant to find and secure an alternative ground water source other than Donner Lake.
3. Effectuating the immediate termination of this application without prejudice.

EXHIBITS:

- A. Location Map,      B. Site Drawing.  
C. Alternative Plan.

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IT IS RECOMMENDED THAT THE COMMISSION:

1. AUTHORIZE THE TERMINATION OF PROCESSING AND THE CANCELLATION OF THE APPLICATION, WITHOUT PREJUDICE, OF TRUCKEE-DONNER PUBLIC UTILITY DISTRICT FOR A PUBLIC AGENCY PERMIT FOR A 24" PIPELINE IN THE BED OF DONNER LAKE.

OR IN THE ALTERNATIVE:

2. APPROVE THE REQUEST FOR EXTENSION OF TIME FOR PROCESSING OF APPLICATION BY TRUCKEE-DONNER PUBLIC UTILITY DISTRICT FOR A 24" PIPELINE IN THE BED OF DONNER LAKE UNTIL JUNE 1, 1977, PROVIDED THAT THE DISTRICT PREPARE AND SUBMIT TO THE COMMISSION, NOT LATER THAN NOVEMBER 15, 1976, A REPORT ON THE PROGRESS OF ALL EFFORTS TO MAKE GROUND WATER SOURCES AVAILABLE TO MEET DISTRICT REQUIREMENTS FOR SUPPLYING THE TAHOE-DONNER DEVELOPMENT.