

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Revocation of)
Application 23019)
(Permit 15912))
CALIFORNIA LAND AND CATTLE COMPANY)
Permittee)

Order: WR 81-8

Sources: An Unnamed Stream and Cow
Creek tributary to San Lorenzo
Creek thence Salinas River

County: Monterey

ORDER GRANTING EXTENSION OF TIME

BY BOARD VICE CHAIRMAN MITCHELL

The time to complete construction and application of water to the proposed use under Permit 15912 having expired; Notice of Proposed Revocation having been sent; permittee having requested a hearing; a public hearing having been held by the State Water Resources Control Board on December 16, 1980; the evidence received at the hearing having been duly considered; the Board finds as follows:

Substance of Permitted Application

1. Permit 15912 was issued on Application 23019 November 7, 1969 for storage of 613 acre-feet per annum (afa) for irrigation, domestic, recreation, and wildlife enhancement purposes. The season of diversion is from October 1 to April 30 of each year. There are two points of diversion that are within: (1) NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 20 (unnamed stream) and (2) SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 17, T20S, R11E, MDB&M (Cow Creek).

Permittee's Project

2. Permittee proposed to construct an earthfill dam 36 feet high and 2250 feet long across Cow Creek and the unnamed stream forming a 613 acre-foot reservoir covering a surface area of 47 acres. Permittee plans to install approximately 1000 feet of 20-inch PVC pipeline to convey the water from the reservoir to an existing distribution system at the place of use. About 425 acres of pasture and seed crops

were irrigated from wells in 1976. The total irrigated area will be 1005 acres when the project is completed.

Background

3. In 1974 an anticipated materials source for constructing the earthen dam was lost and permittee requested an extension of time. During a field investigation in August 1976 by the Division, permittee indicated that construction of the dam would commence during the spring of 1977. It was recommended at that time that if there was no progress by the end of 1977, the permit should be revoked. In May 1980 a Notice of Proposed Revocation was sent to permittee and in June 1980 a hearing before the Board was requested. (Staff #1)

4. There are no downstream diverters of record on Cow Creek or San Lorenzo Creek.

Discussion

5. The notice of hearing did not include within the issues to be covered, the subject of whether a time extension would be considered. Mr. Lowery, attorney for permittee waived any objection in terms of failure of providing procedural due process and the matter was included as a part of the hearing. There are no other licensees, permittees or applicants affected and the need to give others notice is not an issue.

6. Representatives for permittee presented a chain of events which they contend justify the delays experienced in starting construction during 1977 and 1978. They stated that permittee had purchased the equipment necessary to build the reservoir. Also, permittee has completed portions of the distribution system that will be a part of the overall project. They stated that permittee is ready to proceed and requested an extension to finish the project. (RT.5)

7. The following sequence of events were presented as the reasons for the delay in start of construction.

- (a) In 1977 there was a problem with the quality of work done by a contractor hired to construct small reservoirs and to install irrigation distribution systems on another portion of the ranch. This was on land that had been leased for farming. Permittee had to use the equipment to repair these reservoirs to meet the conditions of the lease agreement. (RT 19, 20)
- (b) In 1978 there were periods of heavy rain that caused flooding in King City. Because of new land development, the County of Monterey and the City blamed permittees operation for causing much of the flooding. They requested permittee to construct diversion ditches and settling ponds to correct the problem. This required an unexpected expenditure of funds and use of equipment. (RT 20, 21, 22)
- (c) During the flooding in 1978, a dike failed and part of a field washed out depositing silt and sand in the creek channel. The Corps of Engineers replaced the dike but permittee had to remove the silt and sand and put it back in the field. Permittee also agreed to maintain the levee system and riprapped a portion of the levee to prevent it from washing out again. (RT 22, 23)
- (d) Also during 1978, permittee constructed desilting basins, holding basins, and large drops from a plateau area down to a county road to eliminate an erosion problem. This was done to satisfy Monterey County and required further use of resources intended for construction of the permitted reservoir. (RT 24)

8. The following points were made showing that time and financial resources had already been expended toward development of the project.

- (a) In 1975 permittee contracted for the installation of an irrigation system on a portion of the land designated as the place of use (RT 10, 11). Since 1975, additional irrigation lines have been

installed and permittee is in the process of ordering material to complete tying the systems together (RT 14). While the distribution system is operated solely from wells at the present time, the pipelines have been oversized to handle the flow from the proposed dam. (RT 37)

- (b) In 1976 and 1977 permittee purchased heavy equipment to be used primarily for construction of the dam (RT 10, 36). This equipment was used on the project that corrected problems due to the flooding discussed earlier.

9. Prior to starting construction, permittee's design plans will have to be certified by the Division of Dam Safety. Also, a grading permit will be required from Monterey County.

Environmental Considerations

10. Application 23019 was approved prior to CEQA, however, if an extension of time is granted, additional permit terms should be added under the Board's public interest authority to mitigate environmental concerns.

11. The project area is within the range of the San Joaquin Kit Fox, a rare and endangered species, and provides the type of habitat that the fox could utilize. A survey of the area did not reveal any Kit Foxes, nor was evidence of their habitation found.

12. A permit term should be added directing that if any fox dens are discovered during construction, operations shall cease and the Board and the Department of Fish and Game shall be contacted. Efforts can then be made to trap the fox(es) and transfer them to another suitable location if they are the San Joaquin Foxes.

13. Six archeological sites are near the project. Only one site, at the upper end of the proposed reservoir, will be directly impacted by

construction of the reservoir. This site, Ca-Mnt-628 is a midden of undetermined depth that contains cultural materials deposited by prehistoric inhabitants. A small portion of the site is below the proposed high water level of the reservoir.

14. A permit term should be added directing that no earth-moving equipment shall operate in the site area except as required to protect the archeological site, and that the portion of the site between the high and low water levels in the reservoir be protected.

Conclusions and Recommendations

15. Application 23019 was not protested when originally filed, and no downstream applications have been filed in the interim. Therefore, no other water rights will be adversely affected. Revocation of permitted Application 23019 could result in a new filing and the entire application process would begin again. This would require additional expense and time on the part of permittee and the Board. Our regulations provide that an extension of time will be granted only upon conditions which the Board determines are in the public interest. Any changes that would be made if a new permit were issued can be added to the existing permit as a condition for granting an extension.

16. Permittee has invested money in purchasing equipment which will be used in constructing the dam. Also, pipeline and sprinkler systems which are needed to put the water to beneficial use have been installed. Section 779 of Title 23, California Administration Code, provides "that extension of time may be granted upon a showing that due diligence has been exercised, that failure to comply with previous time requirements has been occasioned by obstacles which could not reasonably be avoided, and that satisfactory progress will be made if an extension of time is granted." The project's construction has been delayed by obstacles that could not have been reasonably avoided (see paragraph 7, supra). Testimony presented during the hearing indicated

that the permittee is both ready and committed to proceeding as expeditiously as possible (RT 75).

17. From the foregoing findings, the Board concludes that permitted Application 23019 should not be revoked, but an extension granted to complete the project, with special permit terms added to the existing permit.

ORDER

IT IS HEREBY ORDERED:

1. That an extension of time for Permit 15912 (Application 23019) be approved and an amended permit be issued to permittee subject to vested rights. The amended permit shall retain all terms contained in the existing permit except the development schedule.

2. That a new development schedule be approved for Permit 15912 as follows:

- (a) "Permittee shall file a completed application for construction of the dam with the Department of Water Resources, Division of Dam Safety, by December 31, 1981. If such application is not filed by that date this permit will stand revoked without further Board action."
- (b) "Permittee shall begin construction by December 1, 1982."
- (c) "Construction work shall be completed by December 1, 1983. Application of water to the authorized use shall be made by December 1, 1985."

IT IS FURTHER ORDERED that the following terms and conditions be included in the amended permit:

3. The State Water Resources Control Board, under its authority to conserve the public interest, retains continuing authority over this permit to require permittee to develop and implement a water conservation program, after notice and opportunity for hearing. The requirements of this term may be satisfied by permittee's compliance with any comprehensive water conservation program, approved by the State Water Resources Control Board, which may be imposed by a public agency.

4. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction permittee shall file a report pursuant to Water Code Section 13260 and shall comply with any waste discharge requirements imposed by the California Regional Water Quality Control Board, Central Coast Region, or by the State Water Resources Control Board.

5. In the event that fox den sites are discovered during the course of construction and the subsequent filling of the reservoir, activities should cease immediately and the Division of Water Rights and Department of Fish and Game, Region III, should be notified at once. Efforts shall be made to trap the fox(es) and transfer them to a safe habitat if they are San Joaquin Kit Foxes.

6. The archeological site identified as Ca-Mnt-628 shall not be disturbed, other than as directed herein, by construction of the reservoir. Heavy equipment shall be kept off the sites as much as possible, and no grading or leveling shall be done at this location. A layer of cobble-sized rock (e.g., riprapping) shall be placed along the portion of Ca-Mnt-628 which is to be inundated. A professional archeologist shall be present prior to the commencement of grading and construction work so that the site boundaries and the area to be riprapped can be delineated.

7. Development at Ca-Mnt-628 shall only be allowed following investigation by a qualified archeologist (approved by the Division of Water Rights) and the implementation of any recommendations resulting from such investigation.

8. Construction of the storage dam shall not be commenced until the Department of Water Resources has approved plans and specifications.

9. In accordance with the requirements of Water Code Section 1393, permittee shall clear the site of the proposed reservoir of all structures, trees and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes. Work performed in accordance with this provision shall not disturb archeological site Ca-Mnt-628.

STAFF IS DIRECTED TO issue an amended Permit 15912 granting an extension of time and updating the permit format to current standards.

Dated: July 16, 1981

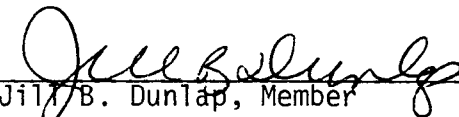


L. L. Mitchell, Vice-Chairman

WE CONCUR:



Carla M. Bard, Chairwoman



Jill B. Dunlap, Member



F. K. Aljibury, Member