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State Water Resources Control Board



Arnold Schwarzenegger
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Division of Water Rights
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NOTICE OF PETITION TO MODIFY LICENSE TERM

LICENSE 8943 (APPLICATION 19145)

PETITION FILED: November 21, 2005

STREAM SYSTEM: Goose Creek tributary to Burney Creek thence Lake Britton
thence Pit River

COUNTY: Shasta

Notice is hereby given that Denny Land and Cattle Company, LLC filed a petition to modify a term from License 8943. The State Water Resources Control Board (State Water Board) will determine whether an order approving the change petition should be issued for License 8943, if so, whether conditions are needed in the license to protect the environment, the public interest, and downstream water users. This notice provides a description of the project and also describes the procedure and time frame for submittal of protests against the petition. This notice may be viewed at the Division of Water Rights' (Division) website at www.waterrights.ca.gov. Any correspondence directed to the petitioners should be mailed to:

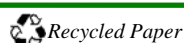
Denny Land and Cattle Company, LLC
c/o Paul S. Simmons
Somach, Simmons & Dunn
Attorneys at Law
813 Six Street, Third Floor
Sacramento, CA 95814-2403

Description of Project: License 8943 authorizes on-stream storage of 6,400 acre-feet (af) in a reservoir with a maximum withdrawal of 4,000 af annually for consumptive use. The license contains a term subjecting it to a stipulation and agreement between the initial applicant and Pacific Gas and Electric Company (PG&E) regarding PG&E's prior rights. The term has subsequently been modified, as described in the background section of this notice.

Summary of License 8943 (APPLICATION 19145)

County: Shasta.
Source: Goose Creek tributary to Burney Creek thence Lake Britton thence Pit River.
Point of
Diversion: Reservoir located within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of section 9, T35N, R2E, MDB&M.
Amount: 6,400 acre-feet per annum (afa) by storage.
Season: November 1 to April 1 of the succeeding year.
Purpose: Irrigation, Domestic, Stockwatering, Fire Protection and Recreational.
Place of Use: Stockwatering, Fire Protection and Recreational Uses at the Reservoir

California Environmental Protection Agency



located within sections 8 and 9, T35N, R2E, MDB&M

Stockwatering, Domestic and Irrigation of a net of 5,000 acres within a gross area of 5,980 acres located within sections 22, 23, 24, 25, 26, 27, 34, 35, and 36, T36N, R2E; sections 1, 2, 3 and 12, T35N, R2E and section 6, T35N, R3E all within MDB&M.

Petition Summary for License 8943 (Application 19145)

The Licensee filed a petition to modify a term from License 8943 referencing a Stipulated Agreement between petitioner and PG&E regarding PG&E's prior downstream rights.

As noted in the background section of this notice, this license term has been modified from its original version. The Licensee petitions to eliminate reference to any PG&E agreement from the license term.

Background

The Division issued License 8943 on February 7, 1969. License 8943 contains a term subjecting it to an agreement between the licensees and PG&E which restricts licensees' diversions to times when there is water in excess of that necessary to satisfy PG&E's prior rights downstream on the Pit River (below Lake Britton) to divert for power purposes at its Pit 3, 4, and 5 power plants.

"This license is expressly subject to those terms and conditions within the jurisdiction of the State Water Resources Control Board set forth in a stipulation between Applicant and protestants Vedder et al. dated December 12, 1960, and a stipulation between applicant and protestant Pacific Gas and Electric Company, dated December 30, 1960; both stipulations filed of record with the State Water Resources Control Board."

The Stipulation and Agreement dated December 30, 1960 includes the following condition:

"Applicants shall make diversion to storage under said Application 19145 and any permit or license issued thereunder only at such times that water would otherwise be available at Pacific's Pit Nos. 3, 4, and 5 diversion dams over and above that necessary to satisfy Pacific's prior rights to divert water for power purposes at its Pit 3, 4, and 5 power plants."

On December 9, 1975, Licensee and PG&E entered into a modified stipulation and agreement as follows:

"Licensees shall make diversion to storage under said License 8943 only between

November 1 and March 31 of each year and only at such times when water is spilling from Lake Britton or when the elevation of water in Lake Britton is above the permanent spillway crest 2752 feet (PG&E datum) and raising in elevation while Pit 3 Powerhouse is operating at maximum capacity...”

On August 18, 1977, the State Water Board issued an Order Approving Stipulation and Agreement with Amendment that substituted the December 9, 1975 Stipulation and Agreement for the December 30, 1960 Stipulation and Agreement.

On July 16, 1990 the Division approved an Order Correcting the Stipulation Condition to reflect a March 20, 1990 Stipulation between the new Licensee, George P. Denny III Trust of June 11, 1981 and PG&E and Amending the License.

On May 20, 1992, the Division approved an Order Amending Stipulation and Agreement Condition to incorporate an amendment to the Stipulation into the license. The Licensee and PG&E have entered into a new agreement entitled “2005 Settlement Agreement Between Pacific Gas and Electric Company and Denny Land & Cattle Company, LLC Regarding Exercise of Water Rights and Use of Water” (2005 Agreement). The effect of the 2005 Agreement is to rescind, revoke and invalidate the 1960, 1990, and 1992 Stipulations and Agreements.

On November 21, 2005, the Division received a Change Petition and the 2005 Agreement from the Licensee and PG&E requesting the license condition be modified as follows:

The condition of the license related to stipulation between Licensee and PG&E shall be amended to delete all reference to any agreement or stipulation between Licensee or amendments thereto, as the agreements and stipulations reference have been revoked. The condition of the license which previously related to stipulations between Licensee and PG&E thus shall provide as follows:

“This license is expressly subject to those terms and conditions within the jurisdiction of the State Water Resources Control Board set forth in a stipulation between applicant and protestants Vedder et al. dated December 13, 1960, such stipulation filed of record with the State Water Resources Control Board.”

Environmental Information

The lead agency will prepare any appropriate environmental documents for the project according to the California Environmental Quality Act (CEQA) and its guidelines, and will determine whether or not the project will cause a significant effect on the environment. If you are not filing a protest, but wish to submit information that indicates the project may cause a significant effect on the environment, please send this information to Steven Herrera; State Water Board, Division of Water Rights; P.O. Box 2000; Sacramento, CA 95812-2000. This information will be reviewed in accordance with CEQA.

PROTEST SUBMITTAL INFORMATION

Protest Requirements

A person may file a protest based on any of the following factors:

- Interference with prior water rights.
- Adverse environmental impact.
- Not in the public interest.
- Contrary to law.
- Not within the jurisdiction of the State Water Board.

All protests must clearly describe the objections to approval of the petition, and the factual basis for those objections. For example, if the objection is based on injury to existing water rights, the protest must describe the specific injury to the existing water right that would result from approval of the changes proposed by the petition. In addition, the party claiming injury to prior water rights must provide specific information that describes the basis of the existing right, the date the use began, the quantity of water use, the purpose of use, and the place of use. Protests based on environmental impacts, public interest, legality, or jurisdictional issues must be accompanied by a statement of facts supporting the basis of the protest. If sufficient information is not submitted, the State Water Board may reject the protest or request that the protestant submit additional information. Protests of a general nature (not project specific) or protests that are inconsistent with constitutional or legislated state policy will not be accepted. A request for information or a request that studies be conducted does not constitute a protest. **The Division will not accept protests that are directed against the underlying water right, rather than the change proposed by the petition.**

Procedure for Submitting Protests

Protests should be submitted on standard protest forms available from the Division of Water Rights' website at www.waterboards.ca.gov/forms/ or upon request from the Division of Water Rights. A pamphlet that provides additional information relating to water rights and the procedure for filing protests is also available on the website or by mail. Any requests or the submittal of the completed protest form should be directed to the engineer listed as the contact person at the end of this notice. **A copy of the completed protest form must also be mailed to the petitioner and should include a description of any measures that could be taken to resolve the protest.**

Protest Submittal Deadline

Protests submitted in response to this notice must be **received by the Division by 3:00 p.m. on July 17, 2006** (30 days after the date of this notice). Protests may be submitted by any of the following methods:

1. Mailed to Division of Water Rights; P. O. Box 2000; Sacramento, CA 95812-2000

2. Faxed to the Division at (916) 341-5400
3. E-mailed to the engineer listed below under the heading "Contact Person"
4. Hand-delivered to the Division office located at 1001 "I" Street, 14th Floor, Sacramento, CA

If you choose to fax or e-mail the protest due to the constraints of the noticing period, the fax or e-mail must be followed by timely delivery of an original signed copy, either personally or by mail, to the Division of Water Rights in order for the protest to be accepted. The State Water Board will respond to all protests within 60 days of the final day to file a protest. **Protests not submitted by the close of the protest period will be subject to rejection.**

For good cause, the State Water Board may grant an extension of time to file a protest. It is the protestant's responsibility to contact the engineer listed below as "Contact Person" to request the extension prior to the end of the protest period.

Resolution of Protests

The petitioners will have 30 days to respond to a protest once it is accepted by the Division of Water Rights. The protestant and the applicant are expected to make a good faith effort to resolve the protest within 180 days from the close of the protest period.

CONTACT PERSON

To obtain additional information regarding this project, or to obtain copies of protest forms, or general information pamphlets, please contact Patricia Meroney by phone at (916) 341-5354 or by electronic mail at pmeroney@waterboards.ca.gov. Information and protest forms are also available at the Division's website: www.waterrights.ca.gov/forms/

Date of Notice: **JUNE 16, 2006**

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