

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Temporary )  
Permit (Application 28686) )  
John Hancock Mutual Life )  
Insurance Company )  
Applicant )

Order: 86- 7  
Source: Cedar Creek  
County: Lassen

ORDER APPROVING APPLICATION FOR  
TEMPORARY PERMIT

BY THE BOARD:

John Hancock Mutual Life Insurance Company (Hancock) having filed Application 28686 for a Temporary Urgency Permit to divert and use unappropriated water pursuant to Chapter 6.5 (commencing with Section 1425), Part 2, Division 2 of the California Water Code; the Board having reviewed available records, files and decisions which relate to the availability of unappropriated water and having consulted with the Department of Fish and Game; the Board having concluded from available information that Hancock qualifies for a Temporary Permit to divert and use water, as provided by Water Code Section 1425, the Board finds as follows:

Substance of the Application

1. On December 31, 1985, Application 28686 was filed for a Temporary Permit to appropriate a total of 2270 acre-feet (af) from Cedar Creek by storage from October 1 to June 30 and by direct diversion of 20 cubic feet per second (cfs) from April 15 to September 15. Water will be used for

irrigation of 2412 acres of alfalfa within Sections 25 and 35, T42N, R12E, MDB&M and Sections 2, 11, 12, 14, 15, 27, 23, 26, 27, 34 and 35, T41N, R12E, MDB&M (presently known as Headquarter Ranch).

### The Project

2. Since 1977, Hancock and its predecessors (Akers and later, Pit River Ranches) have diverted Cedar Creek flow from Tule Lake Reservoir to Headquarter Ranch for irrigation under a claimed pre-1914 appropriative right.
3. All flow in Cedar Creek is diverted into Tule Lake Reservoir which has a storage capacity of 35,000 af. The reservoir has no natural outlet back to Cedar Creek. To divert water to Headquarter Ranch, water is siphoned from the reservoir and discharged back into the natural channel of Cedar Creek. The water flows down the natural channel to the West Valley Reservoir, operated by the South Fork Irrigation District. This water is either temporarily re-regulated or released into the South Fork Pit River. Hancock rediverts the water into the Westside Canal for delivery to its place of use, for sprinkler or flood irrigation.

### Availability of Unappropriative Water

4. On May 31, 1977, the Board received a petition for statutory adjudication of Cedar Creek water being retained within Tule Lake Reservoir. The Board granted the petition on March 16, 1978.

5. The Board found when it issued the Order of Determination (WR 85-5) that:
  - a. Tule Lake Reservoir has an average net yield of 5,500 acre-feet.
  - b. Claimants of the adjudication should be allotted 2,820 acre-feet.
  - c. There is an average of 2,680 acre-feet per annum of additional deliverable yield of water within the system.
  
6. On February 20, 1986, the Lassen County Superior Court entered its Decree affirming the Final Order of Determination (Board Order WR 85-5).
  
7. Hancock estimates the amount of water in Tule Lake Reservoir in December 1985 to be 17,000 acre-feet. After several storms the amount was estimated by Hancock on February 23, 1986 to be approximately 27,000 to 29,900 af. After deducting the minimum pool requirement (6190 af), allocation under the decree (2,820 af) and losses due to evaporation and seepage (4,500 af), from 13,490 to 16,390 af will remain in Tule Lake Reservoir. Hancock's application for temporary permit seeks 2,270 acre-feet leaving a range of 11,220 to 14,120 acre-feet in excess of annual requirements.

Temporary Need

8. The Applicant has two pending water rights applications (27749 & 27851) which are unlikely to be permitted for the 1986 irrigation season. The applicant's 2412 acres of alfalfa is a perennial crop and if irrigation water for the 1986 season were not available, there could be a serious financial impact to the applicant.

## Objection and Dismissal Terms

9. Pacific Gas and Electric Company (PG&E) objects to the issuance of a temporary permit. The objection is based upon alleged injury to prior vested rights when Cedar Creek flow contributes to West Valley Creek thence South Fork Pit River. PG&E makes riparian claims and holds appropriate rights for use of water from the Pit River.

PG&E will withdraw its objection if diversion of water from Cedar Creek will not occur when flows measured at the Canby Gage Station are 300 cubic feet per second or less. PG&E also wants a term requiring the applicant to install proper measuring devices and provide flow records to PG&E.

10. The California Department of Fish and Game (DFG) objects to the application based upon potential injury to the waterfowl and fishery resources at the reservoir. DFG will withdraw its objection if the 6190 acre-foot minimum pool is maintained in Tule Lake Reservoir.

11. Orion L. and Ruth Thomson object on grounds of injury to prior rights and that minimum pool requirements stated in the Final Order of Determination would not be met. This objection may be dismissed if both Thomson's rights and the minimum pool will not be endangered.

12. Dr. L.L. Novy's objection is based on prior rights. He questions the urgency or temporary nature of the appropriation sought and whether Hancock has evaluated its options to utilize alternate sources. Dr. Novy also

believes that approval of the temporary permit may prejudice the other competing applications seeking Tule Lake Reservoir and Cedar Creek water. Dr. Novy's dismissal term is that the temporary permit be approved only for the amount not obtainable from alternate sources.

13. Mendiboure Ranch Inc objects on grounds the appropriation will not serve the public interest and will cause an adverse environmental impact. Mendiboure alleges the public interest would be better served if the unappropriated water is proportioned among parties having rights. Also, should a below average runoff occur, the Hancock appropriation may affect the minimum pool if prior rights holders must extract water from the pool. No dismissal conditions were given.

#### CEQA

14. The Board has prepared a Negative Declaration in accordance with the California Environmental Quality Act (Public Resource Code, Section 21000 et seq.) and its Guidelines, and the Board determines that there will be no significant effect on the environment as a result of the project.

#### Findings

15. Applicant cannot contract to purchase water from the local irrigation district. There are two groundwater wells on the ranch, but they will not cover the majority of the acreage sought under the temporary permit.

16. Hancock has the following licenses to Bayley Reservoir on Crook Canyon Creek:

License 4291 (Application 10079), - Joint holder to collect 745 acre-feet for use on 1966 acres within Sections 14, 23, 25, 26, and 35, T41N, R12E and Sections 1, 2, 11, 26, 27 and 35, T40N, R12E, MDB&M.

License 4294 (Application 13526) - Collection of 113 acre-feet for use on 1544.7 acres within Sections 14, 23, 26 and 35, T41N, R12E, and Sections 1 and 2, T40N, R12E, MDB&M.

License 6071 (Application 14759) - Collection of 93.5 acre-feet for use within the same acreage as license 4294.

License 6951 (Application 16047) - Collection of 204 acre-feet for use within the same acreage as license 4294.

License 6952 (Application 16048) - Collection of 549 acre-feet for use within Sections 2 and 11, T40N, R12E, and Section 35, T41N, R12E, MDB&M.

The total 875.5 acre-feet under these licenses is available for Hancock's use from Bayley Reservoir in the specified place of use.

17. The estimated minimum annual demand for the applicant's 2,412 acres is 5,065.2 acre-feet at a duty of 2.1 acre-feet per acre.

18. Estimated amount in Tule Lake Reservoir on February 23, 1986 is 27,000 af. After deducting the minimum pool requirement (6,190 af), allocation under the decree (2,820 af), losses due to evaporation and seepage (4,500 af) and 2,270 af sought under Hancock's temporary permit will leave a range of 11,220 to 14,120 af in excess of annual requirements.
19. PG&E objections to the temporary permit are dismissed because absent the permit approved herein no water would return to Cedar Creek from Tule Lake Reservoir. Instead, it would flow from Tule Lake Reservoir toward Madeline Plains, outside of the Cedar Creek Watershed. Thus the temporary permit will augment the flows in the Pit River system at the Headquarter Ranch re-division point.
20. Objections from DFG, Thomson, Novy and Mendiboure Ranch are dismissed as prior rights and minimum pool requirements can be satisfied based on the estimated amount of water in storage as of February 23, 1986.

No Effect on Board's Future Decision

21. Issuance of a temporary permit on Application 28686 is independent of any action the Board may take on pending applications for rights to water from Tule Lake Reservoir or from Cedar Creek. No finding herein shall be construed as predeciding any issues, relevant to the Board's consideration of the pending applications, including but not limited to the issue of hydraulic continuity between Cedar Creek and Pit River.

Conclusion

22. Based on the foregoing findings, the Board concludes that Application 28686 should be approved and a temporary permit issued to the applicant subject to the conditions set forth in the following order.

ORDER

IT IS HEREBY ORDERED that Application 28686 be approved for irrigation purposes and that a temporary permit be issued to the applicant subject to vested rights. The permit shall contain standard permit terms 5f, 23, 41, 42, 45, 62 and 69 (a copy of the Board's standard permit terms is available upon request) in addition to the following terms and conditions:

1. This temporary permit is issued and permittee takes it subject to the California Water Code, Division 2, Chapter 6.5, Section 1425 et seq. Any temporary permit issued under this chapter shall not result in creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation at the discretion of the Board. Any temporary permit shall automatically expire 180 days after the date of its issuance, unless an earlier date is specified or it has been revoked.
2. The Board shall supervise diversion and use of water under the temporary permit for the protection of vested rights and instream beneficial uses and for compliance with permit conditions. Permittee shall allow representatives of the State Water Resources Control Board and other parties as may be authorized from time to time by said Board, reasonable



access to project works to determine compliance with the terms of this temporary permit.

3. Pursuant to California Water Code Section 100 and 275, all rights and privileges under this temporary permit, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.
4. The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this temporary permit with a view to minimizing waste of water and to meeting the reasonable water requirements of Permittee without unreasonable draft on the source.
5. The permittee shall report to the Board, within 15 days of issuance of this temporary permit, the amount of water contained in Tule Lake Reservoir. The Reservoir must contain at least 23,100 af before use under this temporary permit may commence.
6. The permittee shall report to the SWRCB by December 1, 1986, the maximum rate of diversion and the total acre-feet diverted under this temporary permit.

CERTIFICATION

The undersigned, Executive Director of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 17, 1986.

AYE: Darlene E. Ruiz  
E. H. Finster  
Eliseo M. Samaniego  
Danny Walsh

NO: None

ABSENT: None

ABSTAIN: None

*Raymond Walsh*

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Raymond Walsh  
Interim Executive Director