
San Francisco Bay Regional Water Quality Control Board

July 13, 2012
Place ID 780512

David J. Anderman
General Counsel
Lucasfilm Ltd.
P.O. Box 29901
San Francisco, CA 94129-0901

Subject: Withdrawal of Water Quality Certification Application for Grady Ranch Project

Dear Mr. Anderman:

While the Water Board does not usually followup on applications that are no longer active, I'd like to respond to your April 20, 2012, letter to the State and federal resource agencies that withdrew Skywalker Properties, Ltd.'s (Skywalker) application for its proposed project at Grady Ranch (project). I'd like to clarify the agencies' permitting processes and our communications with Skywalker's consultants, both to make sure Skywalker understands the issues the agencies consistently raised about the project's design, and to assist Skywalker in efficiently securing State and federal permits for any projects it may propose in the future.

My staff has prepared the attached chronology of its involvement in the permitting of the project, both prior to Skywalker's submittal of a project application and afterwards. From my perspective, there are a number of things Skywalker did well and some not so well during the permitting process.

First, I commend Skywalker and its consultants in regularly meeting with State and federal permitting agencies as a group prior and during the permitting process and in using a Joint Aquatic Resource Permit Application (JARPA) for its project. This helped the agencies streamline their review processes and work together on coordinated comments and recommendations. As a result, Skywalker received single memos on the project's 75% and 90% design plans that represented the agencies' coordinated comments. For the 90% design plans, this also allowed the agencies to provide their response memo within eight days of receiving the plans.

Unfortunately, much of the benefit of this streamlined and coordinated permitting process was lost when Skywalker did not take advantage of the agencies' comments both before and during the permitting process to submit designs that would minimize water quality impacts and achieve the agencies' jurisdictional requirements. At the pre-application meetings in 2009, the agencies made it clear to Skywalker that a project design that included significant, and potentially unstable, fill in Grady and Miller creeks, as then proposed, would not be permissible. In addition, the agencies made it clear that extra

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precautions would need to be taken in the design and implementation of the project given the presence of steelhead in both Grady and Miller creeks. However, the design included with the original JARPA in September 2011 still proposed approximately 68,000 cubic yards of fill in creeks, and even the design submitted with the 90% design plans in March 2012 needed further reduction in creek fill. From my review of the record, it appears that the time Skywalker and its consultants spent trying to justify the appropriateness of a design the agencies had already indicated could not be permitted would have been better used finalizing a design that would have minimized impacts and allowed the agencies to approve the project long before Skywalker felt it needed to withdraw its application.

I commend Skywalker on making its application review timing needs clear to the agencies as their permitting processes moved forward. However, it appears that another missed opportunity was the breakdown in coordination between the environmental review (CEQA) process and the agencies' permitting processes. I understand that the CEQA process for the project was delayed by the County, as lead agency, to ensure that the changes in project design sought by the agencies were appropriately specified in the CEQA documents and considered. Delays in the CEQA process are understandably frustrating, but it is important to recognize that State agencies cannot formally approve a project until the CEQA process fully defines all components and potential impacts of a project and the resultant CEQA document is certified by the lead agency. To avoid such delays and frustrations, I recommend that, for any future project applications, Skywalker and its consultants work with the lead agency to ensure that project design changes are made early in the CEQA process and that those changes are reflected in all CEQA documents being considered.

It is also important to recognize that all resource agencies have many projects to review with ever diminishing staff levels. Thus, it is not in the agencies' interest to slow any part of their permitting processes down – another reason we appreciate Skywalker's coordination efforts for this project. However, speaking for the Water Board, we cannot approve a project simply in an effort to be expedient when that project presents the potential for significant water quality impacts and the mitigation for those impacts is uncertain.

I hope these comments are helpful should Skywalker apply for permits from the State and federal resource agencies in the future. If you or one of Skywalker's representatives cares to discuss this further, do not hesitate to contact me at 510-622-2314 or bwolfe@waterboards.ca.gov, or Dyan Whyte, Assistant Executive Officer, at 510-622-2441 or dwhyte@waterboards.ca.gov.

Sincerely,

Bruce H. Wolfe
Executive Officer

Attachment: Chronology

Cc with attachment:

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Chronology of Water Board Review of Proposed Grady Ranch Project

Pre-application Period

State and federal resource agency review of the proposed Grady Ranch Project, its potential for aquatic resource impacts in the Miller Creek watershed, and its creek repair “restoration concept” (Project) began in fall 2009 and included field trips and meetings with Skywalker’s consultants from fall 2009 until summer 2011. During these early field trips, agency representatives informed Skywalker’s consultants that the “restoration concept” of using almost a mile of creek channels on the Grady Ranch property as a disposal site for fill was not a permissible design for the Project as it had not been demonstrated that this design minimized water quality impacts to the maximum extent practicable.

Because of this early feedback, Skywalker’s consultants invested a significant amount of time in conducting additional studies, producing reports, and coordinating additional field trips and meetings in an attempt to build a case for the channel fill concept. The agencies continued to raise the same basic issues regarding the proposed creek fills over that period of time. These issues included the significant risks that the filling of Grady and Miller creeks posed from a channel and landscape stability perspective and the potential water quality and fish habitat impacts resulting from changes in stream flows and sediment supply. In addition, the potential for adverse impacts to groundwater and stream hydrology was an ongoing issue because any changes in the timing or amount of stream flows could prevent Miller Creek, and particularly its tributary Grady Creek, from supporting existing steelhead habitat in the pools of upper Grady Creek.

JARPA Application Received September 2, 2011

Skywalker’s consultants submitted a Joint Aquatic Resource Permit Application (JARPA) for the Grady Ranch Precise Plan to the agencies in September 2011 that, among its features, proposed filling 7.2 acres of stream channels with 67,660 cubic yards of material. Based on their JARPA review, the agencies held a permit coordination meeting with Skywalker’s representatives in November 2011, where all pre- and post-application issues related to the Project were discussed in detail.

As a result of that meeting, the agencies informed Skywalker on December 1, 2011, that they could not approve a project design that included fill of the Miller Creek channel and its tributaries above the Grady Bridge without being assured that this fill would be stable and not adversely affect the creek below the bridge. The agencies also specified that in order to permit any additional fill or modifications to other sections of Miller Creek and its tributaries, Skywalker would need to resolve the agencies’ previously stated concerns that such fill could permanently impact stream hydrology and fish passage through the Miller Creek and Grady Creek confluence.

At the same time, the agencies indicated that it would be possible to allow some fill in the area of a significant headcut (a large drop in the channel bed) on Miller Creek because reconnecting the slope of the channel in this location could potentially benefit steelhead by reopening access to the upper Miller Creek watershed. We also noted that any change in channel elevation and slope at the headcut would impact Grady Creek by raising its confluence where it flows into Miller Creek. We agreed that, if the headcut was filled, the mouth of Grady Creek would also need to

be filled (or raised in elevation) for the purposes of reconnecting it with the modified Miller Creek and that Skywalker's consultants should submit designs of how this could be accomplished in a stable manner.

At this time, the agencies explicitly requested more information on the potential impacts to hydrology and groundwater caused by the Project's construction footprint and highlighted the agencies' ongoing concerns about Grady Creek. The agencies asked that Skywalker's consultants further address the potential impacts due to proposed landscape changes, changes in stream flows, groundwater hydrology, and fish passage so as to minimize impacts to existing fish habitat.

Agency Comment Memo of December 8, 2011

The agencies followed up their December 1 communications with a December 8 coordinated agency-written comment memo to help Skywalker produce 75% design plans. The memo stated that the agencies could not permit the fill of the Miller Creek channel above the Grady Bridge and that the design of the confluence area with Miller Creek and Grady Creek had not been resolved. The memo suggested measures Skywalker could take in the design of the Project to achieve the objective of restoring creeks and improving the watershed's aquatic ecosystems. We noted in the memo that there were significant design/construction issues that still needed to be addressed if Skywalker planned to move forward with the fill of stream channel S-4, lower Miller Creek, and lower Grady Creek. Based on this memo, Skywalker submitted its 75% plans for the Project on January 26, 2012.

In response to the January 26 submittal, the agencies met with Skywalker's consultants on February 9 to identify design features that needed to be addressed to make the 90% plans complete. At this meeting, issues addressed included the need to clarify the proposed channel modification designs for Grady Creek and to provide additional information that would resolve stormwater runoff and groundwater issues near the Project's building pad. At both a followup February 23 meeting and a teleconference in early March with Skywalker's consultants, the agencies stressed the importance of addressing the agencies' remaining concerns regarding impacts to the hydrology of the Miller-Grady Creek drainages if the Project's permitting process was to move forward expeditiously. We repeatedly stressed that this information was critical to the Endangered Species Act consultation that the National Marine Fisheries Service needed to complete as part of its biological opinion on the Project's potential impacts to migrating steelhead. Based on these meetings, Skywalker submitted its 90% plans for the Project on March 19, 2012.

Agency Review Memo of March 29, 2012

In response to the March 19 submittal, the agencies provided verbal comments within four days and completed their coordinated agency-written review memo on the 90% plans within eight days. While the March 19 submittal did not provide all the information the agencies had requested, in an effort to expedite the permitting process, the agencies considered their review of the 90% plans the last step in application review. As such, the March 29 memo focused on addressing the following issues needing resolution: specifying design details regarding subdrains and stormwater management near the Project's building pad, identifying changes to Grady Creek groundwater and hydrology that would reduce and mitigate impacts to fish in Grady Creek, providing review of the fill placement design at the headcut on Miller Creek, and providing

review of how the Grady and Miller Creek channels would be reconnected to prevent the potential unraveling of proposed fill in lower Grady Creek.

As indication that the Water Board's permitting process was nearly complete, Water Board staff posted Skywalker's JARPA and Project designs reports on our website at the beginning of April, requesting submittal of any public comments on the Project by April 27, 2012. Furthermore, in order to address concerns over how the County's CEQA process would be completed, all agencies met with County supervisors Kinsey and Adams on April 18. At that meeting, the agencies indicated that, if the final project design addressed the issues specified in the March 29 memo, the Project could conceivably get all agency approvals by the end of May. However, on April 20, Skywalker sent letters to all the agencies withdrawing the Project application.