see Order WR 82-12

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Twenty-five Applications on Tributaries to the Salinas River Between Salinas Dam and the Nacimiento River	Decision:	1585
Applicants Listed in Table 1	Sources:	Various (Tributary to Salinas River)
CITY OF SAN LUIS OBISPO, ET AL.	Counties:	San Luis Obispo Monterey
Protestants		
Protestants Listed in Table 1		

DECISION APPROVING APPLICATIONS 24186, ET AL., IN PART

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DECISION APPROVING APPLICATIONS 24186, ET AL., IN PART

By Board Vice-Chairman Mitchell:

Twenty-five applications on tributaries to the Salinas River between Salinas Dam and the Nacimiento River having been filed for permits to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Resources Control Board on May 13, 1980; testimony having been received; the evidence at the hearing having been duly considered; the Board finds as follows:

Substance of the Applications:

1. The substance of the applications is given in Table 1. The approximate location of each application is shown in Figure 1.

Protests

2. The City of San Luis Obispo protested all applications except Application 25989 on the basis of the requirement in its permitted Application 10216 for storage and diversion at Salinas Dam that prohibits diversion unless a visible surface flow exists in the Salinas River between Salinas Dam and the confluence of the Nacimiento River (hereinafter referred to as the "live stream" requirement). The City claims that junior diverters from tributaries to the Salinas River in that reach have a responsibility toward maintaining a "live stream" in the Salinas River in order to protect the City's prior right.

3. The City of San Luis Obispo did not protest Application 25989, although that application requests diversion of water from the same vicinity of Tassajera Creek as Applications 25044 and 25284. Application 25989 was included in this proceeding on the basis that the claim of responsibility toward maintaining a "live stream" in the Salinas River applies equally to that application as to the others. In addition, Application 25989 requests

Table 1
SUBSTANCE OF APPLICATIONS

Application No. and Applicant(s)	Source(s)	Quantity	Diversion Season	Purpose(s)	Point(s) of Diversion	Place of Use	Protestant(s)
24186 John C. Tubbs, et al.	1) Indian Creek trib to Shedd Canyon 2) Unnamed Stream trib to Indian Creek	48 afa	11/1 to 5/1	Irrigation Stockwatering Recreation Fish Culture	1) NW¼ of NW¼, Sec 32, and 2) SW¼ of NE¼, Sec 32, T28S, R15E	45 Acres in N½ of NW¼, Sec 32; and at reservoir	City of San Luis Obispo
24187 John C. Tubbs, et al.	Indian Creek trib to Shedd Canyon	48 afa (23 in Res. 1) (25 in Res. 2)	11/1 to 5/1	Irrigation Stockwatering Recreation Fish Culture	Two points within NW¼ of NW¼, Sec 32, T28S, R15E	45 Acres in N½ of NW¼, Sec 32; and at reservoir	City of San Luis Obispo
24533 Alex Stenman	Unnamed Stream trib to Huerhuero Creek	4 afa	11/1 to 7/1	Stockwatering Recreation	SE¼ of NE¼, Sec 6, T27S, R13E	At reservoir	City of San Luis Obispo
24656 John A. Lesperance, et al.	Unnamed Stream trib to Dyck Creek thence Jack Creek	40 afa (Reduced to 2 afa at hearing)	11/1 to 6/15	Irrigation Recreation Fire Protect. Frost Protect.	NE¼ of NW¼, Sec 7, T27S, R11E	20 Acres in NE¼ of NW¼, Sec 7; and at reservoir	1) City of San Luis Obispo 2) R. J. and E. Peet
24766 Chris & Laura Klintworth	Indian Creek trib to Shedd Canyon	22.4 afa	11/1 to 5/1	Stockwatering Recreation	SE¼ of NW¼, Sec 32, T28S, R15E	At reservoir	City of San Luis Obispo
24773 Transco Products, Inc.	Unnamed Stream trib to Jack Creek	20 afa	10/1 to 5/1	Stockwatering Recreation Fire Protect.	SE¼ of NE¼, Sec 3, T27S, R10E	At and near reservoir	1) City of San Luis Obispo 2) City of El Paso de Robles 3) John & Naty Hango

*All Public Land Survey References are within the Mt. Diablo Base and Meridian.

Table 1 (cont.)
SUBSTANCE OF APPLICATIONS

Application No. and Applicant(s)	Source(s)	Quantity	Diversion Season	Purpose(s)	Point(s) of Diversion	Place of Use	Protestant(s)
24819 Manuel and Rachel Larralde	Unnamed Stream trib to San Marcos Creek	16 afa	11/1 to 4/30	Irrigation Domestic Recreation Stockwatering Fire Protect.	SE¼ of NW¼, Sec 11, T26S, R11E	At and near reservoir	City of San Luis Obispo
24826 Keith and Antha Harnish	Unnamed Stream trib to Huerhuero Creek	6 afa	11/1 to 4/1	Stockwatering Recreation Fire Protect.	NE¼ of SE¼, Sec 32, T26S, R13E	At reservoir	1) City of San Luis Obispo 2) L. V. Hughes
24886 Daryl and Margaret Nelson	East Branch Huerhuero Creek trib to Huerhuero Creek	49 afa	11/1 to 6/30	Stockwatering Recreation Fire Protect. Fish Culture Wildlife Propagation	NW¼ of NW¼, Sec 11, T29S, R14E	At and near reservoir	1) City of San Luis Obispo 2) Nils Oberg, et al. 3) Irv & Coralie McMillan
24903 Nick & Gretta Pokrajac	Unnamed Stream trib to San Marcos Creek	24 afa	11/1 to 5/1	Irrigation Domestic Stockwatering Recreation Fire Protect.	NW¼ of SW¼, Sec 15, T26S, R11E	41 Acres in SW¼, Sec 15	1) City of San Luis Obispo 2) Harry Blythe, Jr.
24986 Manuel and Rachel Larralde	Unnamed Stream trib to San Marcos Creek	4 afa	11/1 to 4/1	Stockwatering Recreation Fire Protect.	SE¼ of NW¼, Sec 11, T26S, R11E	At and near reservoir	City of San Luis Obispo
24990 Robert and Lorraine Martin	Unnamed Stream trib to Middle Branch Huerhuero Creek	12.6 afa	11/1 to 4/1	Stockwatering Recreation Wildlife Enhancement	NW¼ of SE¼, Sec 9, T29S, R14E	At reservoir	City of San Luis Obispo
25044 John & Carrie Segreto	Unnamed Stream trib Tassajera Creek	1) 4,329 gpd 2) 90 gpd 3) 2 afa (4.9 afa max.)	1) 10/1 to 4/1 2) 10/1 to 4/1 3) 11/1 to 4/1	1) Domestic 2) Stockwatering 3) Irrigation Stockwatering Recreation Fire Protect.	NW¼ of NE¼, Sec 27, T29S, R12E	2 Acres in NW¼ of NE¼, Sec 27; and at reservoir	1) City of San Luis Obispo 2) City of El Paso de Robles 3) Santa Margarita, LTD 4) Dept. of Fish and Game

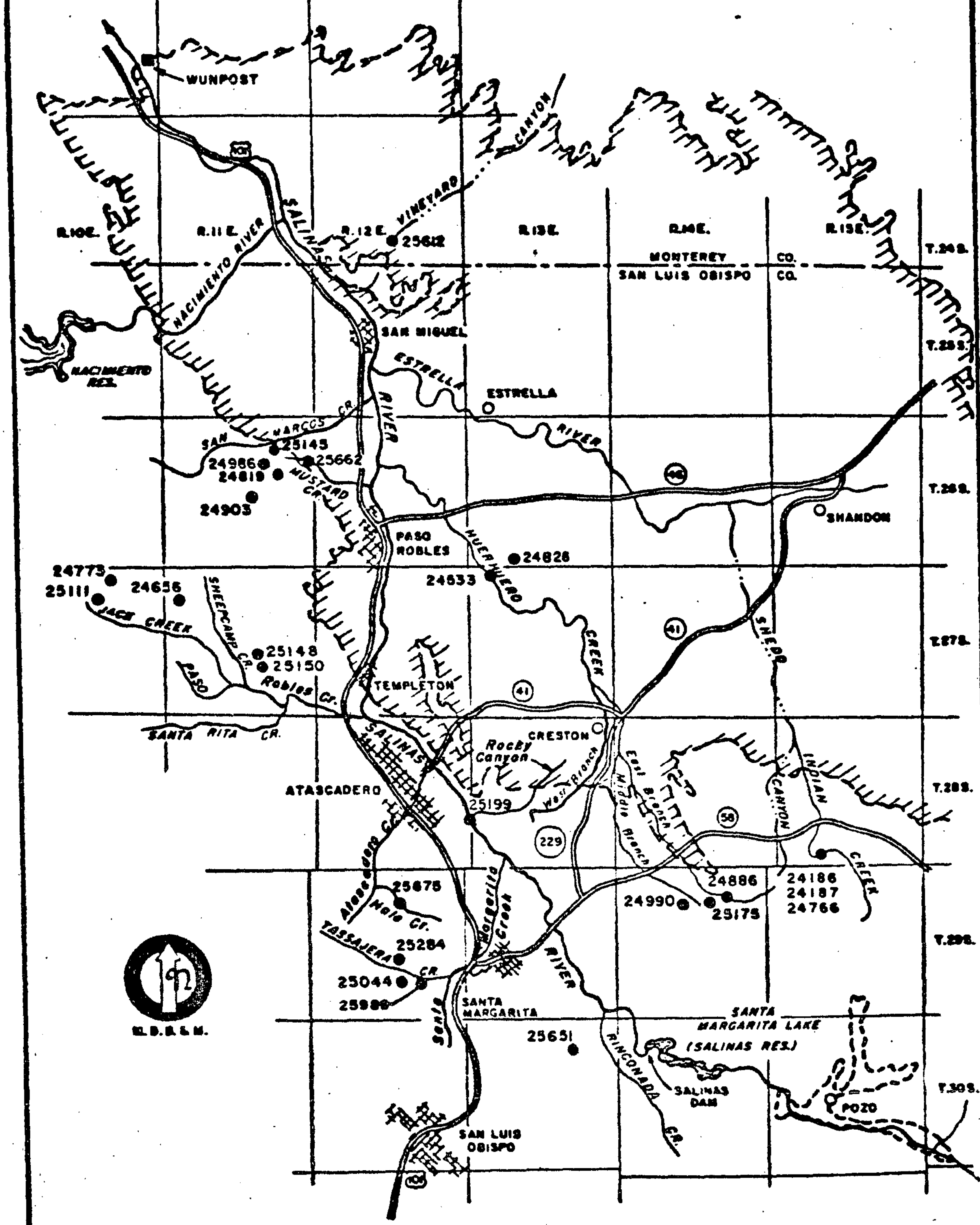
Table 1 (cont.)
SUBSTANCE OF APPLICATIONS

Application No. and Applicant(s)	Source(s)	Quantity	Diversion Season	Purpose(s)	Point(s) of Diversion	Place of Use	Protestant(s)
25111 Frank and Freida Stout	Unnamed Stream trib to Jack Creek	20 afa	11/1 to 4/30	Irrigation Stockwatering Recreation	SE¼ of SW¼, Sec 10, T27S, R10E	10 Acres in SW¼, Sec 10; and at reservoir	1) City of San Luis Obispo 2) Bruce Blythe 3) George & Donna Hoag
25145 Albert and Beatrice Long	Unnamed Stream trib to San Marcos Creek	8 afa	11/1 to 4/1	Irrigation Stockwatering Recreation Fire Protect.	SW¼ of NW¼, Sec 11, T26S, R11E	5 Acres in NW¼ of NW¼, Sec 11; and at reservoir	City of San Luis Obispo
25148 Jim & Atillio Busi	Unnamed Stream trib to Sheepcamp Creek (same reservoir as 25150)	1 afa	12/1 to 4/1	Stockwatering Fire Protect.	One point each within the NW¼ and SW¼ of SW¼, Projected Sec 22, T27S, R11E	At and near reservoir	City of San Luis Obispo
25150 Walter and Olga Sulenta	Unnamed Stream trib to Sheepcamp Creek (same reservoir as 25148)	3 afa	12/1 to 5/1	Irrigation Stockwatering Fire Protect.	One point each within the NW¼ and SW¼ of SW¼, Projected Sec 22, T27S, R11E	10 Acres in SW¼ of SW¼, Proj. Sec 22; and at reseroir	City of San Luis Obispo
25175 Ralph Yates & Linda Pacheco	Middle Branch Huerhuero Creek trib to Huerhuero Creek	10 afa	12/1 to 4/1	Domestic Irrigation Recreation Fire Protect.	SE¼ of NW¼, Sec 10, T29S, R14E	10 Acres in SE¼ of NW¼, Sec 10; and at reservoir	City of San Luis Obispo
25199 Gary, Bobbie, & Jan Davis	1) Salinas River Underflow 2) Rocky Canyon trib to Salinas River	1) 0.85 cfs 2) 49 afa (300 afa max.)	12/15 to 5/15	Irrigation	1) SE¼ of NE¼, Proj. Sec 25, T28S, R12E 2) NE¼ of NW¼, Sec 30, T28S, R13E	80 Acres in SW¼, Sec 19 and NW¼, Sec 30	City of San Luis Obispo
25284 Robert and Marillyn Miner	Unnamed stream trib to Tassajera Creek	8.5 afa (6 in upper) (2.5 in lower)	12/1 to 4/1	Fish Culture Wildlife Enhancement	Two points within NW¼ of SW¼, Sec 22, T29S, R12E	At reservoirs	1) City of San Luis Obispo 2) Burc and Alleson Sinclaire

Table 1 (cont.)
SUBSTANCE OF APPLICATIONS

Application No. and Applicant(s)	Source(s)	Quantity	Diversion Season	Purpose(s)	Point(s) of Diversion	Place of Use	Protestant(s)
25612 Roger Donlon dba Rancho Aguage	Vineyard Canyon trib to Salinas River	3 afa	11/1 to 4/1	Stockwatering	SE¼ of SE¼, Sec 28, T24S, R12E	At reservoir	City of San Luis Obispo
25651 Hobson Bros. Packing Co.	Unnamed Stream trib to Rinconada Creek	8 afa	11/1 to 4/1	Stockwatering	NW¼ of NW¼, Sec 11, T30S, R13E	At reservoir	City of San Luis Obispo
25662 Calvin Abbott	Mustard Creek trib to Salinas River	5 afa	10/1 to 6/1	Wildlife Enhancement	SW¼ of SE¼, Sec 12, T26S, R11E	At reservoir	City of San Luis Obispo
25675 Helen Smith	Hale Creek trib to Atascadero Creek	100 afa	10/15 to 3/31	Irrigation Recreation Fire Protect. Wildlife Enhancement	SW¼ of SW¼, Sec 10, T29S, R12E	109 Acres in Sec 3 and Sec 10; and at reservoir	City of San Luis Obispo
25989 George Sullivan	Two Unnamed Streams trib to Tassajera Creek	1a) 0.054 cfs 1b) 600 gpd 2) 0.5 afa	1a) 5/1 to 9/30 1b) 1/1 to 12/31 2) 11/1 to 3/31	1a) Irrigation 1b) Domestic 2) Irrigation Recreation Fire Protect. Wildlife Enhancement	NW¼ of NW¼, Sec 26, T29S, R12E	6 Acres in NW¼ of NW¼, Sec 26; and at reservoir	None

FIGURE 1



LIMITS OF PASO ROBLES GROUNDWATER BASIN

LIMITS OF POZO GROUNDWATER BASIN

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

PORTION OF
UPPER SALINAS RIVER
DRAINAGE

SCALE

diversion of water during the summer months. Board Decision 739 found that no unappropriated water is available in the Salinas River during that season.

4. The Department of Fish and Game protested Applications 25044, 25284, and 25989, all on tributaries to Tassajera Creek. Upon completion of field studies, the Department's protests to Applications 25284 and 25989 were withdrawn on the basis that the proposed diversions would not cause significant adverse impacts on fish or wildlife resources. The Department claims that the existing dam under Application 25044 is a complete barrier to fish migration.

5. The City of Paso Robles protested Applications 24773, on a tributary to Jack Creek, and 25044, on a tributary to Tassajera Creek. The City claims injury to the supply of water to its wells along the Salinas River, use of which began prior to December 19, 1914, the effective date of the Water Commission Act.

6. Also, the City of Paso Robles testified as an interested party against Applications 24656 and 25111 on Jack Creek, 25148 and 25150 on Sheep-camp Creek, 25199 on Rocky Canyon and the Salinas River, and 25675 on Hale Creek, claiming the same injury as indicated above.

7. Other protests, listed in Table 1, are based on downstream prior rights in individual watersheds or stream systems, or on an environmental or public interest basis. Of those, testimony was received from: (1) Nils Oberg against Application 24886 on the basis of dam safety considerations and on a prior right to divert 35 acre-feet per annum from October 1 to May 31 for stockwatering and recreation purposes under licensed Application 18205; (2) Harry E. Blythe, Jr. against Application 24903 on the basis of downstream prior rights to store 423.2 acre-feet per annum to be collected from October 31 to April 30 in four reservoirs for irrigation, stockwatering, recreation, and wildlife propagation under licensed Applications 16829,

21153, 18673, and 21262; and (3) Bruce Blythe against Application 25111 on the basis of downstream prior rights including licensed Application 21545 for year-round diversion of 705 gallons per day for stockwatering purposes.

Watershed and Water Supply

8. The applications being considered are located in that part of the Upper Salinas River Basin that is upstream of the Nacimiento River, an area of approximately 1,600 square miles out of a total of about 2,200 in the Basin.* The Salinas River originates in the southwest portion of the Basin, flows in a northwesterly direction closely paralleling the coastal mountains to just south of the community of Templeton, then flows in a northerly direction beyond the San Luis Obispo-Monterey County line (the extent of the current proceeding). From that point, the Salinas River continues in a northwesterly direction across Monterey County discharging into Monterey Bay.

9. The coastal mountains form the western drainage divide of the area under consideration; the eastern limits being at the divide with the San Joaquin Valley. Salinas Dam controls the upper 112 square mile drainage of the Salinas River. Below Salinas Dam, the river flows through a winding mountain canyon emerging into an alluvial plain about four miles north of the community of Santa Margarita. Downstream of that point it is convenient to divide the tributaries to the Salinas River into those draining the west side of the river and those draining the east side. Major tributaries from the west are Santa Margarita Creek, Atascadero Creek, Paso Robles Creek, and San Marcos Creek; those from the east are Huerhuero Creek and Estrella River,

* The Upper Salinas River Basin consists of all of the Salinas River watershed in San Luis Obispo County plus that portion in Monterey County northerly to the drainage divide near Wunpost, about ten miles downstream of the Nacimiento River.

both joining the Salinas River north of the City of Paso Robles (see Figure 1). By far the largest portion of the watershed under consideration lies on the east side of the Salinas River; about 150 square miles in the Huerhuero Creek system and 1,000 square miles in the Estrella River system.

10. The location and geography of the area under consideration cause a wide variation in the amount of precipitation received at various points. Storms generally approach from the Pacific Ocean. The coastal mountains cause substantially heavier rainfall over the westerly portion of the area than in the easterly portion. Mean seasonal precipitation in the higher elevations of the coastal range is approximately forty inches, quickly decreasing in a northeasterly direction to: the mid-twenties just west of the Salinas River south of Templeton, the mid-teens in the vicinity of the City of Paso Robles, and approximately ten inches in the eastern area. More than ninety percent of the average annual runoff occurs during the months of December through April.

11. Geologic features of the various tributary watersheds, in combination with the precipitation pattern, significantly influence the amount of runoff contributing to the Salinas River.

12. Shallow water bearing alluvial deposits of 30 to 50 feet in thickness make up the bed of the Salinas River and its tributaries from south of the community of Santa Margarita northerly to beyond the confluence of the Nacimiento River and the Salinas River.

13. Santa Margarita Creek, Paso Robles Creek, and San Marcos Creek, all west side tributaries to the Salinas River downstream of Salinas Dam, contain alluvial deposits for about five or more miles from the river. Alluvium also exists in Jack Creek, a tributary to Paso Robles Creek, and in the upper reaches of San Marcos Creek.

14. Extensive reaches of alluvium exist to the east of the Salinas River in the tributaries joining the river north of the City of Paso Robles. Most of the streambed of Huerhuero Creek and its branches is alluvium, except for the upper reaches which consist of non-water bearing formations. Estrella River and its main tributaries are almost entirely alluvium. Vineyard Canyon and Indian Valley, the major east side tributaries to the Salinas River between the Estrella River and the Nacimiento River, likewise, consist almost entirely of alluvial deposits.

15. The general geology (including that underlying stream related alluvium) in the upper Salinas River watershed to just south of the community of Atascadero is mostly non-water bearing rock formations. The same is true on the west side of the Salinas River to the vicinity of the City of Paso Robles and, to the north, in that portion of the San Marcos Creek watershed upstream of the river connected alluvium. The upper portion of the Huerhuero Creek watershed and the extreme upper reaches of several adjacent drainages to the east which are tributary to the Estrella River, including Shedd Canyon, also consist of rock and other non-water bearing formations. The geology of most of the remainder of the Upper Salinas River Basin consists of water bearing non-marine sand, gravel, silt and clay sediments, up to 2,000 feet in thickness, known as the Paso Robles formation.

16. The Paso Robles Groundwater Basin generally coincides with the Paso Robles formation and extends easterly of the Salinas River from just south of Atascadero to the surface drainage divide and resulting constriction of subsurface flow to the north at Wunpost in Monterey County. The easterly limit of the basin approaches the divide with the San Joaquin Valley. North of the City of Paso Robles, the basin increasingly extends

to the west of the Salinas River underlying much of Mustard Creek and the lower portion of San Marcos Creek (See Figure 1). The basin is approximately 900 square miles in area, most of which is within the area of the Salinas River under consideration herein.

17. Silty clays of low permeability exist within the upper portion of the Paso Robles formation beneath and adjacent to the Salinas River alluvium from about the community of Templeton northward. These clays appear to be sufficiently thick and extensive to act as a barrier separating underflow in the river alluvium from groundwater that occurs in the underlying older water-bearing formations. The clays also appear to exist in conjunction with the alluvium in Huerhuero Creek downstream of the community of Creston, in Estrella River downstream of the community of Estrella, and in the lower portion of Vineyard Canyon and San Marcos Creek.

18. Replenishment of the Paso Robles Groundwater Basin, because of the clay barrier, occurs mainly from percolation of streamflow in the higher ground surface elevations overlying the basin, and to a much lesser extent from direct percolation of precipitation and irrigation. The Estrella River watershed appears to be the major source of replenishment, however, the upper reaches of the Huerhuero Creek, San Marcos Creek and Mustard Creek watersheds also contribute. The groundwater gradient is generally toward the Salinsa River closely following the direction of surface flow in the replenishment watersheds. In the vicinity of the Salinas River, the groundwater gradient follows the river, concentrating at Wunpost. From about the community of San Miguel downstream, small quantities of groundwater may enter the Salinas River underflow.

19. Surface flow in the Salinas River Basin is generally a result of rainfall runoff; snowmelt is not an important factor. Stream flows diminish significantly after the rainfall season. Analysis of streamflow records for the Salinas River, Jack Creek, and Santa Rita Creek indicates that subsequent to construction of Salinas Dam in 1941, tributaries from the west side of the Salinas River downstream of the dam contribute a major portion of the flow in the river at the USGS streamflow gage at Paso Robles. The watershed upstream of Salinas Dam can also generate considerable runoff, but, except for unusually wet periods, most is controlled by Santa Margarita Lake. Analysis of streamflow records for Huerhuero Creek and Estrella River indicates that significant surface flow in the lower reaches of these systems only occurs during the larger storms, the frequency of which varies from more than one per year to none for several years.

20. Runoff in the upper portions of the Huerhuero Creek and Estrella River systems which consist of non-water bearing geologic formations generally produces streamflow, however, some subsurface water movement and storage can occur in the weathered and fractured rock. Downstream in Huerhuero Creek to about the community of Creston, runoff can percolate into and through the streambed alluvium to the underlying Paso Robles formation. Below Creston, the low permeability clay layer prevents most percolation to groundwater, therefore, runoff generally either percolates into the alluvium as underflow or remains on the surface as streamflow. The latter occurs only during the larger storms when the volume of runoff in the watershed is greater than what can percolate into the alluvium, or if the alluvium is locally fully saturated. Flow in Estrella River and its tributaries upstream of about the community of Estrella can percolate into and through the streambed

alluvium to the Paso Robles Groundwater Basin. Downstream of Estrella, the low permeability clay retards percolation to the groundwater basin, resulting in mainly underflow except during larger storms.

21. Because of the permeable nature of the Vineyard Canyon watershed, runoff generally percolates through the alluvium into the groundwater basin, or in the lower reach, remains in the alluvium as underflow confined by the underlying low permeability clay. Significant surface flow occurs only during major storms.

22. Because of the precipitation pattern and geology in the San Marcos Creek watershed, runoff and streamflow are significantly different in time and quantity than in adjacent watersheds to the south. Streamflow in the upper portion of San Marcos Creek can percolate through localized stream related alluvium into fractures and joints of the underlying rock, eventually reaching the Paso Robles Groundwater Basin. Further downstream, runoff percolating through the river connected alluvium is confined from further downward movement into the underlying groundwater basin by the low permeability clay layer. Therefore, streamflow approaching the Salinas River generally either percolates into the alluvium becoming underflow or remains on the surface as streamflow. There are indications that the smaller flows would become underflow prior to reaching the river.

23. Geologic information indicates that runoff in Mustard Creek can generally percolate directly into the Paso Robles formation.

24. Because of higher average precipitation, non-water bearing geologic formations, and steeper terrain, the west side tributaries to the Salinas River south of the City of Paso Robles generally produce much more runoff and streamflow than San Marcos Creek or the east side tributaries.

However, alluvium in the lower reaches of the west side tributaries, and further upstream in Paso Robles Creek and Santa Margarita Creek, may absorb the smaller flows, thus resulting in only underflow approaching the Salinas River.

25. The watersheds immediately to the east of the Salinas River from the vicinity of the community of Atascadero to Huerhuero Creek, including Rocky Canyon, are relatively small. Percolation directly into the Paso Robles formation significantly reduces the amount of streamflow normally reaching the Salinas River. East side watersheds further to the south are small, steep, consist mostly of non-water bearing formations, and discharge into the canyon portion of Salinas River below Salinas Dam.

26. The Salinas River generally exhibits some streamflow upstream of Santa Margarita Lake throughout most years. Significant flows normally occur only during and following winter storms. Much of the winter flow in the river is stored in Santa Margarita Lake. Spills at Salinas Dam occur only in the wetter years. The United States Army Corps of Engineers and the City of San Luis Obispo hold identical appropriations for diversion and storage at Santa Margarita Lake. The estimated safe yield from the Lake is approximately 5,000 acre-feet per year. The City of San Luis Obispo has been virtually the sole user of this water for many years.

27. Average annual flow in the Salinas River at the streamflow gage at Paso Robles, about 32 miles downstream of Salinas Dam, is greater than 60,000 acre-feet per year, fluctuating widely. Median annual flow is about 30,000 acre-feet. The river is generally dry during summer and fall months, and has been continuously dry for a year or longer during critical periods.

Availability of Unappropriated Water

28. Except for Application 25199, all of the applications being considered are located some distance from the main stem of the Salinas River. Therefore, the availability of water in individual streams will be separately determined, considering local protests. Also, the effect that each requested diversion will have on the existence of surface flow in the Salinas River will be determined in order to evaluate the City of San Luis Obispo's protests claiming that the "live stream" in the Salinas River will be adversely affected. The following findings will address the Salinas River in general first, then individual applications grouped by main tributaries where possible.

Salinas River

29. The "live stream" requirement in the Salinas River (see paragraph 2) was placed on Permit 5882 (Application 10216) of the City of San Luis Obispo by Board Order of June 1, 1972, as amended on October 5, 1972, in order to protect prior rights downstream of Salinas Dam. The rationale for that requirement is that if a continuous thread of water exists on the surface of the river, percolation into the sands and gravels of the underflow and to the Paso Robles Groundwater Basin will occur at close to the maximum rate possible throughout the reach. The river underflow and the groundwater basin will therefore be replenished approximately the same as if Salinas Dam did not exist. The City of San Luis Obispo rightfully claims that this responsibility applies equally to new appropriators from the Salinas River and its tributaries downstream of Salinas Dam.

30. Observed existence of a "live stream" in the Salinas River, and continuous periods of significant measurable flow at the Paso Robles streamflow gage are:

Year	"Live Stream"	Flow at Paso Robles Gage
1979-80	1-13 to 6-11	1-11 to 7-8*
78-79	1-22 to 5-21	1-14 to 5-24
77-78	1-10 to 6-7	1-6 to 6-10
76-77	No live stream	No flow
75-76	No live stream	No flow
74-75	2-3 to 5-21	2-2 to 5-21
73-74	1-5 to 5-25	12-22 to 5-28
72-73		1-10 to 5-22
71-72		1-27 to 3-18
70-71		12-2 to 4-30
69-70		1-16 to 5-1
65-66 to 68-69		No measurements
64-65		12-27 to 5-19
63-64		1-2 to 4-19
62-63		1-31 to 6-26
61-62		1-20 to 5-15
60-61		No flow
59-60		2-1 to 5-9

Based on the above and on the annual quantity of flow in the Salinas River downstream of Salinas Dam, we find that unappropriated water exists in the upper Salinas River from about January 1 to May 15 of most years. Any application that is found to have an effect on the maintenance of surface flow in the Salinas River from Salinas Dam to the Nacimiento River will have its season of diversion limited to that period.

* Less than 1 cubic foot per second after 6-31.

31. Board Decision 739, adopted on April 14, 1952, found that unappropriated water existed in the Salinas River at Salinas Dam from October 1 to April 1. That determination was based on a nine-year record of stream flow measurements following construction of Salinas Dam. Seven of those years had considerably less rainfall than the average of the 63-year record to that time. Our finding above is based on a much longer record of stream flow measurements, plus actual observation of the existence of flow in the Salinas River since 1973 under the "live stream" requirement.

32. Rocky Canyon, the stream in which the reservoir under Application 25199 is located, may not produce sufficient runoff to satisfy the requested storage quantity (49 acre-feet per year). Diversion from the Salinas River is also requested for storage in that reservoir, as well as for direct diversion for irrigation purposes. Since diversion is requested either from or close to the Salinas River, unappropriated water is only available from January 1 to May 15. Additionally, a special term will be included in the permit to restrict diversion to times when a "live stream" exists in the Salinas River. Also, the existing outlet pipe in the applicant's dam will be required to be maintained in good working order.

33. The effect that the remaining applications have on the maintenance of a "live stream" in the Salinas River is dependent on surface flow and subsurface flow continuity between the requested points of diversion and the river.

34. Surface flow continuity from the west side tributaries exists during the winter rainfall season in most years. On the other hand, surface flow continuity from Huerhuero Creek, Estrella River, and several other downstream tributaries from the east side of the Salinas River exists only

during the larger storms. However, during such storms, a "live stream" in the Salinas River is of little consequence because of the high flows and discharge to the ocean. Also, it is probable that most of the requested appropriations would be completely satisfied (storage in reservoirs) during one large storm and little diversion would occur for the remainder of the season. Therefore, contributions toward existence of a "live stream" in the Salinas River are critical only during low flow conditions. Such conditions normally exist during extended periods having no large storms. Consequently, low flow surface continuity with the Salinas River is most likely from the wetter less permeable west side tributaries, but is not likely from the drier more permeable east side tributaries.

35. All of the streams from which diversions are requested can be in hydraulic continuity with the Salinas River during low flow conditions by a combination of upstream surface flow and downstream underflow. However, movement of water through the alluvium in the lower reaches of most tributaries is rather slow. It takes a year or more for subsurface water to flow one mile in Huerhuero Creek, Estrella River, San Marcos Creek, Paso Robles Creek, and Santa Margarita Creek. Because of a steeper gradient, underflow in Vineyard Canyon travels about 2.5 miles in one year. Any proposed diversion from a location further away from the Salinas River than indicated will not have an effect on the flow in the river by a reduction of underflow contribution before the following rainy season.

36. Subsurface flow in most of Mustard Creek can percolate directly to the Paso Robles Groundwater Basin.

37. Based on the previous three paragraphs, we find that proposed diversions from the Huerhuero Creek, Estrella River, and Mustard Creek watersheds which are greater than one mile from the Salinas River will have no

effect on maintaining a low flow "live stream" in the river. Also, any proposed diversion from Vineyard Canyon which is greater than 2.5 miles from the Salinas River will likewise have no effect on the "live stream". For such diversions, local conditions will govern the availability of unappropriated water. All of the applications being considered on these streams are further from the Salinas River than the specified limits.

38. Flow from San Marcos Creek may contribute toward the existence of a low flow "live stream" in the Salinas River downstream of the City of Paso Robles. Therefore, in order to protect the City of San Luis Obispo's prior rights, especially early in the runoff season, we find that the season of availability of unappropriated water in San Marcos Creek should fall within the January 1 to May 15 period unless local conditions dictate otherwise. However, should the "live stream" requirement in the City of San Luis Obispo's permit (license) be changed in the future so as not to require a visible flow between the streamflow gage at Paso Robles and the Nacimiento River (see paragraph 52), the authorized diversion season for the San Marcos Creek watershed need not be restricted. The permit term discussed under "Reserved Jurisdiction" allows such change.

39. Because long duration or late spring flows in San Marcos Creek would most likely percolate into the Paso Robles Groundwater Basin from the upper reaches, or become underflow in the lower reach, we find that "live stream" restrictions are not necessary for requested diversions greater than one mile from the Salinas River. All of the applications being considered on San Marcos Creek are further away from the river than one mile.

40. Flow from the remaining west side tributaries from which appropriations are requested (Paso Robles Creek, Atascadero Creek, Santa Margarita Creek, and Rinconada Creek) can contribute toward the

existence of a low flow "live stream" in the Salinas River. Therefore, the season of availability of water should fall within the January 1 to May 15 period unless local conditions dictate otherwise. Further restriction of diversion by means of a "live stream" term is discussed separately later in this decision.

Tributaries

41. Unappropriated water is available most of the time in the local watersheds for all of the requested appropriations except for Application 25989.

42. Application 25989 requests direct diversion from May 1 to September 30 of each year for irrigation purposes, and throughout the year for domestic purposes from a tributary to Tassajera Creek. Also, diversion to storage of 0.5 acre-foot per annum in an adjacent tributary to Tassajera Creek is requested from November 1 to March 31 to be collected from both tributaries. Water for irrigation from the first tributary will be conveyed either into storage or directly through the reservoir to the place of use beyond. The total amount of water requested is 17.4 acre-feet per annum. The stream on which the reservoir is located flows seasonally, but the stream from which the direct diversions are requested flows perennially, being supplied by springs. The perennial stream appears to be a major contributor to summer flows in Tassajera Creek, which generally flows throughout most of the year. Further downstream, however, any surface flow in Tassajera Creek during the summer months percolates into the alluvium in Santa Margarita Creek.

The Department of Fish and Game withdrew its protest of this application after completion of field investigations indicated that the

requested diversions would not result in any major impact to the anadromous fishery resource. However, the dense riparian habitat along Tassajera Creek could be adversely affected by a significant reduction in summer flow. Additionally, Santa Margarita Ltd., a protestant to nearby Application 25044, claims riparian and pre-1914 rights to Tassajera and Santa Margarita Creeks. Also, the community of Santa Margarita obtains its water supply from wells adjacent to Santa Margarita Creek. We therefore find that water is not available for Application 25989 after May 15, the ending of the diversion season previously determined with respect to flow in the Salinas River.

The resulting May 1 to May 15 direct diversion season for irrigation will not serve a useful purpose, consequently that use will be denied. Although the applicant's total domestic use might be diverted under his claimed riparian right to the perennial stream, we will approve a partial season appropriation for domestic use and condition the permit to be issued to prevent duplication of rights. The requested storage to be collected from both streams can be approved for a diversion season of January 1 to March 31 of each year. Because of the small quantity of water involved, a "live stream" permit term would serve no useful purpose.

43. Special terms will be included in the permits to be issued for the following applications in order to protect local downstream prior rights or to determine the actual amount of water diverted under the permit:

(a) Application 24826 requests storage in a small tributary to Huerhuero Creek. Protestant Hughes has a downstream stockpond (Stockpond Claim No. 417). Because of the low runoff potential, a term requiring an outlet pipe, or other means of providing for downstream prior rights, will be included in the permit.

(b) Application 24533 requests storage in a small tributary to Huerhuero Creek, supplemented by offstream diversion to the reservoir from the underflow of Huerhuero Creek. The latter, via a 200 to 300 foot well, will divert from below the confining low permeability clay layer underlying the Huerhuero Creek alluvium. Therefore, the well will not be diverting underflow, but extracting groundwater, for which the Board has no jurisdiction in this case. Collection to storage of the requested four acre-feet per annum will be authorized, however, a special term will be included in the permit requiring periodic measurement of the amount of water in the reservoir and the quantity of water pumped into the reservoir from the well. The actual quantity of surface runoff diverted to storage can thus be determined for licensing purposes.

It is very unlikely that runoff will occur to the July 1 ending date of the requested diversion season, therefore, that date will be shortened to April 30 to more closely coincide with the pattern of precipitation in the area.

(c) Application 24990 requests additional storage to that under licensed Application 23940 in an existing reservoir on a tributary to Middle Branch Huerhuero Creek. Special terms requiring release of stored water under certain circumstances are included in the license for Application 23940 in order to protect downstream prior rights. The same terms will be included in the permit for Application 24990.

(d) Application 25175 requests storage in Middle Branch Huerhuero Creek. Licensed Application 23912, which authorizes storage approximately one mile downstream, contains the same terms for protection of downstream prior rights as mentioned for Application 23940 in paragraph (c) above.

Similar terms will be included in the permit for Application 25175. A term requiring an outlet pipe, or other satisfactory facility, will also be included in the permit to provide the means for required releases of water.

(e) Application 24886 requests storage of 49 acre-feet per annum from East Branch Huerhuero Creek to be collected between November 1 and June 30. Protestant Oberg holds licensed Application 18205 for storage of 35 acre-feet per annum to be collected from October 1 to May 31 in a reservoir located within 1,000 feet downstream. There may be years when sufficient runoff will not be available to satisfy both rights. In such cases, the applicant may have to release some or all of the water stored that season to satisfy the protestant's prior right. Special terms will be included in the permit for that purpose, including a requirement that the existing outlet pipe in the applicant's dam be maintained in good working condition. Protestant's claim of a safety hazard with respect to applicant's dam is discussed later in this decision.

Applicant holds licensed Application 23913 for storage of 49 acre-feet per annum downstream of protestant Oberg's reservoir. The authorized season of collection for that reservoir is from November 1 to May 1. The diversion season for Application 24886 will be made the same.

(f) Application 24766 requests collection to storage of an additional 22.4 acre-feet per annum from November 1 to May 1 in an existing reservoir on Indian Creek about ½ mile upstream from the two reservoirs involved in Application 24187 (being considered in this decision) and licensed Application 23159, and the diversion to off-stream storage portion of Application 24186 (being considered in this decision). The applicant holds licensed Application 23109 for collection to storage of 20 acre-feet per annum in the reservoir during the same season.

Unappropriated water is available for Application 24766 in only about 60% of the years. All three of the downstream appropriations are of a higher priority than the applicant's current application, but of a lower priority than the applicant's license. Therefore, in some years the applicant may have to release water stored that season in the reservoir under Application 24766 to satisfy downstream prior rights, but would not be required to release any water stored in the reservoir under licensed Application 23109. Special terms will be included in the permit for Application 24766 to require a staff gage in the reservoir, an outlet pipe or other means of releasing water, and release of stored water for satisfaction of downstream prior rights.

(g) Application 24903 requests storage of 24 acre-feet per annum to be collected between November 1 and May 1 from a tributary to San Marcos Creek. Protestant Blythe owns four downstream reservoirs having a total capacity of 423 acre-feet. One of those, Bald Mountain Reservoir, is on the same reach of the tributary as the applicant's project; another is on the lower reach of the tributary; and the other two are on San Marcos Creek. Licensed Application 18673 authorizes storage of 9.2 acre-feet per annum at Bald Mountain Reservoir, to be collected from October 31 to April 30. Sufficient unappropriated water should be available in most years for Application 24903. However, because of the limited contributing area, the permit will contain special terms requiring a staff gage in the reservoir, and release of water stored during any season that protestant's downstream rights at Bald Mountain Reservoir are not satisfied. The protestant's other three reservoirs collect from comparatively larger watersheds, and are located such that it is unlikely that late season releases from applicant's reservoir would be necessary, or if so, would reach the intended location. A special term will be included in the applicant's permit requiring that the existing outlet pipe in the applicant's reservoir be maintained in good working order.

The diversion season to be authorized will begin on January 1. This will allow early winter runoff to be collected at protestant's smaller reservoir. Consequently, jurisdiction should not be exercised for Application 24903 to lengthen the authorized diversion season, as specified in paragraph 38, should the "live stream" criteria in the City of San Luis Obispo's permit (license) be changed to eliminate the requirement of a visible flow in the Salinas River north of the streamflow gage at Paso Robles.

44. Applications 24656, 24773, and 25111 request storage on tributaries to Jack Creek, the latter being tributary to Paso Robles Creek. Applications 25148 and 25150 request storage in one reservoir on a tributary to Sheepcamp Creek, which joins Paso Robles Creek about one mile downstream of Jack Creek.

Alluvium exists in Paso Robles Creek throughout the reach from Jack Creek to the Salinas River, a distance of over seven miles. Alluvium also exists in the lower reach of Jack Creek and at various locations upstream for several miles. Smaller storms may generate stream flow in the upper portion of Jack Creek or in Sheepcamp Creek, the geology of which consists of non-water bearing formations, but such flows usually percolate into the downstream alluvium in Jack Creek or Paso Robles Creek before reaching the Salinas River. Also, two licensed reservoirs below Application 24773 and one below Application 25111 will probably intercept any such flows. Therefore, early in the rainfall season (prior to January 1), when the probability of substantial precipitation is low, all runoff should be allowed to accrue to downstream prior rights including recharging the underflow of Paso Robles Creek and the Salinas River so that subsequent flows can establish a "live stream" in the river as soon as possible. Accordingly, the authorized

diversion season for the referenced applications should begin on January 1, as previously determined in paragraph 40.

During the hearing in this matter, the applicants for Application 24656 agreed to reduce the requested quantity from 40 acre-feet per annum to 2 acre-feet per annum, the capacity of the existing reservoir.

Application 24656 was protested by downstream diverter Peet claiming pre-1914 rights to the flow of the tributary on which the applicant's reservoir is located (Statement of Water Diversion and Use 8363). Protestant Peet did not indicate the quantity of water claimed under that right (it appears to be a relatively small amount for stockwatering purposes) nor was any testimony offered at the hearing.

Application 24773 was protested by the City of Paso Robles and one other downstream diverter. The protest by the City of Paso Robles is discussed separately later in this decision. Protestant Hango holds licensed Application 4421 for diversion of 0.55 cubic foot per second between March 15 and November 1 from the Salinas River near the City of Paso Robles. Protestant Hango did not offer any testimony at the hearing. The proposed diversion under Application 24773 is about 15 miles from the Salinas River. There are several more miles to the location of Protestant Hango's diversion. The requested storage of 20 acre-feet per annum will not have any significant effect on the protestant's prior right.

Application 25111, which requests storage of 20 acre-feet per annum to be collected from November 1 to April 30, was protested by two downstream diverters. Protestant Blythe believes that the requested diversion season should be reduced to December 31 to April 1. Blythe holds licensed Application 21545 for diversion of 705 gallons per day throughout the year from Jack Creek about five miles below applicant's reservoir. Blythe also claims

riparian rights to the waters of Jack Creek. Protestant Hoag holds licensed Application 16921 for diversion of 0.11 cubic foot per second from Jack Creek between April 15 and November 15. Hoag's diversion is about ½ mile below that of Blythe. The diversion season to be authorized for Application 25111 (January 1 to April 30) is one month longer than recommended by Protestant Blythe, and overlaps Protestant Hoag's season by only 15 days. In addition, there is an intervening reservoir located about ½ mile below applicant's project. Licensed Application 16827 authorizes storage of 20 acre-feet per annum to be collected from October 1 to April 30 at that reservoir. Considering the foregoing, plus the relatively long distance and additional watershed between the applicant's and protestants' diversions, the season to be authorized should have little effect on the protestants' prior rights. However, a term will be included in the permit requiring an outlet pipe or other facility to pass water downstream.

45. Application 25675 requests additional storage of 100 acre-feet per annum to be collected from Hale Creek between October 15 and March 31 in an existing 300 acre-foot reservoir. Applicant holds permitted Application 24113 for storage of 200 acre-feet per annum in the reservoir, to be collected during the same season. Application 25675 was filed to authorize storage for the total capacity of the existing reservoir, and to provide carry-over storage. No increase in annual use is planned.

The permit for Application 24113 restricts diversion within the authorized season only to times when there is surface flow from Atascadero Creek into Salinas River. That requirement was agreed to by the City of Paso Robles, a protestant to Application 24113, as protection to its downstream rights in the Salinas River. Although not a protestant, the

City of Paso Robles is an interested party to Application 25675. Therefore, the same term will be included in the permit for Application 25675.

Based on our previous findings herein concerning low flows in the Salinas River, diversion under Application 25675 should be restricted to begin on January 1, and after that only at times when there is a "live stream" in the river. The term discussed in the previous paragraph does not address flow in the Salinas River, however, the rights of the City of San Luis Obispo should be sufficiently protected so that additional requirements with respect to a "live stream" are not necessary. Because this application requests additional storage in an existing reservoir during the same season as previously authorized, we will not, at this time, restrict the requested diversion season to begin on January 1. However, the permit term discussed under "Reserved Jurisdiction" allows the season of diversion to be conformed to later findings of the Board.

46. Application 25044 requests direct diversion of 4419 gallons per day between October 1 and April 1, and collection to storage of two acre-feet per annum between November 1 and April 1 from a tributary to Tassajera Creek. Protestant Santa Margarita, Ltd., claims riparian and pre-1914 rights to Tassajera and Santa Margarita Creeks by virtue of ownership of approximately 16,000 acres in the area. The Board has no record of such rights, and the protestant did not provide any testimony at the hearing. The protest by the Department of Fish and Game is discussed later in this decision. The Department did not recommend any restrictions in the quantities of water diverted. The protest by the City of Paso Robles is also discussed later in this decision.

The tributary from which the diversions are requested usually flows throughout most of the year in the upper reach, but is intermittent in the lower areas where the applicant's project is located. Tassajera Creek

generally flows throughout most of the year. During summer months, surface flow from Tassajera Creek usually percolates into the alluvium in the lower five miles of Santa Margarita Creek. However, during the winter season, Santa Margarita Creek appears to be a significant contributor to the underflow and low surface flows of the Salinas River. Accordingly, the beginning of the authorized diversion seasons will be January 1.

The applicant indicated that a well would be constructed to provide water during times not authorized by the application. The applicant also claims a riparian right to flow in the subject tributary, but states that the water sought by the application is in addition to that right. Since the tributary is not perennial at the applicant's location, applicant's total domestic use cannot be diverted under a riparian right. Although the direct diversion requested in the application might be diverted under riparian claim, we will approve the direct diversion and condition the permit to be issued to prevent duplication of rights.

47. Application 25284 requests storage of 8.5 acre-feet per annum in two reservoirs to be collected between December 1 and April 1 from a tributary to Tassajera Creek. Protestant Sinclaire claims riparian and overlying rights about 1½ miles downstream for irrigation of 75 acres of crops. The protestant did not indicate the time or quantity of diversion, nor was any testimony offered at the hearing. The Board has no record of such rights. It is unlikely that storage of the quantity of water requested under this application will measurably affect the protestant's rights.

The subject tributary to Tassajera Creek is an intermittent stream that usually goes dry in the summer. However, since Tassajera Creek/Santa Margarita Creek may directly contribute to low flows in the Salinas River during the winter season, the diversion season to be authorized will begin on January 1.

48. Application 25651 requests storage of 8 acre-feet per annum to be collected between November 1 and April 1 from a tributary to the lower portion of Rinconada Creek. The applicant's reservoir is located about two miles from Rinconada Creek, on the opposite side of a small fault formed valley. Rinconada Creek can contribute directly to the surface flow of the Salinas River, therefore, the diversion season to be authorized will begin on January 1.

Although Rinconada Creek may contain surface flow, testimony indicates that low flows in the tributary may not remain on the surface in crossing the flat two miles of valley floor. Nevertheless, before January 1, recharge of local underflow and establishment of surface flow to Rinconada Creek and the Salinas River is necessary in order to establish a "live stream" in the Salinas River as soon as possible. However, after January 1, when the possibility of runoff occurring in other watersheds on the west side of the Salinas River increases significantly, a "live stream" permit term for the short season to be authorized for this application does not appear to serve a useful purpose.

"Live Stream" Term

49. Based on our findings under "Availability of Unappropriated Water" above, a "live stream" term will be included in permits for Applications 25199 and 25675, and may be appropriate for the other applications listed below:

App. No.	Stream System	Diversion Season to be Authorized	Quantity to be Authorized (afa)
25199	Rocky Canyon and Salinas River	1-1 to 5-15	275
25675	Hale Creek	10-15 to 3-31	100
24656	Jack Creek	1-1 to 5-15	2

App. No.	Stream System	Diversion Season to be Authorized	Quantity to be Authorized (afa)
24773	Jack Creek	1-1 to 5-1	20
25111	Jack Creek	1-1 to 4-30	20
25148	Sheepcamp Creek	1-1 to 4-1	1
25150	Sheepcamp Creek	1-1 to 5-1	3
25044	Tassajera Creek	1-1 to 5-15	4.4
25284	Tassajera Creek	1-1 to 5-1	8.5

The record for the streamflow gage at Paso Robles (see paragraph 30) indicates that if a measurable flow in the Salinas River does not exist at the gage by the first part of February, it will probably not occur at all that season. Under such conditions, bypass of flow at individual projects would not have any perceptible effect that year with respect to flow in the Salinas River. Bypass to satisfy other downstream prior rights, however, may be necessary. The record at the Paso Robles gage also indicates that once a measurable flow exists, it will usually continue to exist at least until after mid-April. Consequently, the most likely time that a "live stream" term in individual permits would accomplish the intended purpose of contributing toward the existence of surface flow in the Salinas River is during January and early February, and after mid-April. Except for Application 25199, the length of time and probable quantities diverted after mid-April for the applications listed above would not influence flow in the Salinas River. Further, the time and effort involved in complying with a "live stream" requirement during January and February, except for Applications 25199 and 25675, is not justified by the minimal effects on flow in the Salinas River that would result from the relatively small quantities involved. Therefore, we find that no significant beneficial purpose would be served by imposing "live stream" restrictions in permits for applications requesting less than about 25 acre-feet per year, providing such projects are not located relatively close to the Salinas River.

50. In view of the above, only permits to be issued on Applications 25199 and 25675 require a "live stream" term. As previously discussed (paragraph 45), the term to be included in the permit on Application 25675 will be the same as in the existing permit for the same reservoir. Therefore, a new "live stream" term will only be required for the permit on Application 25199. The term will restrict diversion only to those times, during the authorized season, when a "live stream" exists in the Salinas River.

51. The City of San Luis Obispo's permit for diversion at Salinas Dam restricts that diversion to times, within the authorized diversion season, when a visible surface flow exists in the approximately 45 miles of the Salinas River from Salinas Dam to the confluence of the Nacimiento River. The County of San Luis Obispo, current operator of Salinas Dam, visually checks the river at several critical locations to insure a continuous surface flow before commencing diversion. We find this to be too cumbersome of a procedure to impose on individual diverters. We will therefore require, for reasons to be discussed below, that authorized diversions only take place when a measurable flow exists at the USGS streamflow gage on the Salinas River at Paso Robles.

52. In 1975, a private engineering firm conducted a yield study of Santa Margarita Lake. Flow into and downstream of the lake, and recharge of the downstream groundwater basin were analyzed. The results indicated that the flow at the USGS gage at Paso Robles was indicative of the flow in the river throughout the reach from Salinas Dam to the Nacimiento River. However, the study did not adequately correlate recharge in the reach of the Salinas River from the Paso Robles gage to the Nacimiento River with the existence of surface flow at the gage (see Board Order WR 78-3). Hydrogeologic studies for the applications being considered herein identified

the relatively impermeable clays in the upper portion of the Paso Robles formation that act as a barrier separating underflow in the Salinas River alluvium from underlying groundwater (see "Watershed and Water Supply"). Furthermore, the hydrogeologic studies indicate that when a visible surface flow exists in the Salinas River in the vicinity of the City of Paso Robles, it is likely that the river alluvium is locally fully saturated or near maximum underflow storage and transmission capacity to as far downstream as the confluence of the Nacimiento River. In fact, flow from groundwater probably augments the Salinas River underflow from the community of San Miguel downstream. Therefore, these studies lead us to find that for the purpose of conditioning permits that could have an effect on low flow conditions in the Salinas River, only the reach of the river from Salinas Dam to the Paso Robles gage is critical, and the existence of a measurable flow at the gage will be the determining criteria. However, so long as the City of San Luis Obispo's permit contains requirements for a visible flow all the way to the Nacimiento River, the season of diversion for permits to be issued on San Marcos Creek must be limited to the period from January 1 to May 15 to protect the City's prior right. As previously indicated (paragraph 38), the reserved jurisdiction term to be included in all permits (see "Reserved Jurisdiction") allows future lengthening of the authorized diversion season from San Marcos Creek if appropriate.

City of Paso Robles Rights

53. The City of Paso Robles' protest to Applications 24773 and 25044 and testimony concerning Applications 24656, 25111, 25148, 25150, 25199, and 25675 claims injury to the supply of water to its wells along the Salinas River. One of the purposes of inserting the "live stream"

requirement in the permits of the Corps of Engineers and City of San Luis Obispo for diversion at Salinas Dam was to protect the claimed pre-1914 downstream rights of the City of Paso Robles. Therefore, all of the considerations herein with respect to diversion seasons, low flows in the Salinas River, and inclusion of "live stream" terms in permits to be issued apply to the rights of the City of Paso Robles as well as the City of San Luis Obispo.

With respect to the City of Paso Robles' rights, the permit to be issued on Application 25199 will contain a reduced diversion season and special "live stream" term as previously stated under "Availability of Unappropriated Water". The permit to be issued on Application 25675 will contain the identical special term accepted by the City in a previous permit for the same facility.

The relationship between the City's rights and the other referenced applications requires several clarifying findings.

54. The City of Paso Robles obtains water from wells adjacent to the Salinas River (for which it holds permitted Application 10294) and to the east of the river. The latter are deep wells extracting from the Paso Robles Groundwater Basin. The wells adjacent to the river are both shallow and deep. Because of the clay layer identified in the hydrogeologic studies for the applications being considered herein, the City's river wells extract from both the groundwater basin and the separately confined underflow of the river. The City claims pre-1914 rights for these wells in addition to the appropriation under Application 10294. It now appears that the application should only apply to that water extracted from the underflow, the Board having no jurisdiction, in this case, for extraction from groundwater.

55. Because of the relatively impermeable clay layer, it is doubtful that Salinas River underflow percolates to recharge the Paso Robles Groundwater Basin downstream of the community of Templeton. Paso Robles Creek, of which Jack Creek is a tributary, joins the Salinas River about one mile upstream of Templeton. Therefore, flow from Paso Robles Creek is not a significant contributor to the groundwater supply, but may contribute to the underflow or low surface flows of the Salinas River. Applications 24656, 24773, 25111, 25148, and 25150 request diversion from tributaries to Jack Creek or Paso Robles Creek. The diversion season for all of these will be limited to the period from January 1 to May 15 as previously stated under "Availability of Unappropriated Water". However, as determined in paragraph 49, the relatively small quantities of water involved make imposition of "live stream" restrictions impractical for these applications.

Application 25044 requests diversion from a tributary to Tassajera Creek. Flow from Santa Margarita Creek, of which Tassajera Creek is the major tributary, can infiltrate to both the Salinas River underflow and the Paso Robles Groundwater Basin. As previously stated, the diversion season to be authorized for all applications on tributaries to Tassajera Creek will be limited to the period from January 1 to May 15, however, no "live stream" term will be imposed because of the small quantities of water involved.

Other Issues

56. Protestant Oberg claims that the dam under Application 24886 presents a safety hazard. In the event of a breach in the applicant's dam, protestant states that his dam, which is within 1,000 feet downstream, would also be breached as would at least two other downstream dams. The small size of the dams involved does not place them under jurisdiction of the

Division of Safety of Dams. Dam safety is not normally an issue within the jurisdiction of the Board. In this case, the applicant claims that the dam was designed by and built under the supervision of the United States Soil Conservation Service. Although erosion has taken place along the spillway, the applicant claims that it has stabilized and is not a hazard to the dam. The applicant also claims that no inhabitants would be endangered downstream. Under such conditions, we find no compelling reason to require that the applicant have the dam certified structurally safe by a registered engineer.

57. Application 24886 was also protested by the McMillans on the basis of adverse environmental impacts and that the application does not best conserve the public interest. The protestant claims that (1) the area is extremely marginal for livestock use, (2) sufficient recreational opportunities exist in the surrounding national forest, (3) fires are seldom fought from reservoirs, (4) there are other methods of supplying water for wildlife, and (5) the water to be appropriated should be allowed to flow downstream for irrigation purposes and to recharge domestic wells. The protestant did not appear at the hearing or submit any additional information for the record. In accordance with Title 23, California Administrative Code, Section 731, we interpret protestant's failure to appear at the hearing or show good cause therefore as abandonment of interest in this application.

58. The Department of Fish and Game protested Application 25044 claiming that the applicant's dam causes a complete barrier to fish migration. The Department recommends that a flashboard drop structure and fishway be incorporated into the applicant's dam to allow steelhead trout access to former upstream spawning and nursery habitat areas. In order to restore the lost steelhead run, the Department also recommends that the applicant pay

for the planting of 100 smolt steelhead each year for a three year period. Terms to carry out these recommendations will be included in the permit to be issued.

59. Based on our findings herein, the diversion season for 14 of the 25 applications being considered will be restricted to the period from January 1 to May 15. All 14 applications involve storage in existing reservoirs, only two of which have outlet pipes. We have previously determined that a term requiring an outlet pipe or other means of bypassing water will be included in the permit for one other of these applications. In order to provide the means for compliance with the restricted diversion seasons of the remaining 11 applications, a term will be included in the permits requiring future installation of an outlet pipe or other suitable facility if the Board determines that individual circumstances dictate such action.

60. During processing of Applications 25044 and 25145, the originally requested ending dates for the diversion season were reduced from year-round and May 1, respectively, to April 1 in accordance with the findings of Board Decision 739. We now find that unappropriated water is available in the upper Salinas River watershed until about May 15. We will therefore approve Application 25044 for a diversion season ending on May 15 and Application 25145 for a diversion season ending on May 1.

61. During processing of Applications 24826 and 25284, the originally requested ending dates for the diversion season were reduced from April 30 and May 1, respectively, to April 1 upon agreement by the applicants for the purpose of filing a Notice of Exemption. Since Negative Declarations were prepared instead, as indicated below, we will approve Application 24826 for a diversion season ending on April 30 and Application 25284 for a diversion season ending on May 1.

62. All of the requested uses of water are beneficial.

Reserved Jurisdiction

63. The applications being considered in this decision were combined into one proceeding because of the common issue of the "live stream" requirement in the City of San Luis Obispo's prior rights at Santa Margarita Lake. That issue has been a major consideration in the findings made herein concerning availability of water, season of diversion, and permit conditions. However, only seven years of experience under the "live stream" requirement are available in the record, two years of which had no surface flow in the Salinas River.

The Board is currently reviewing the status of the City of San Luis Obispo's and the Corps of Engineer's permits at Santa Margarita Lake. Board Order of June 1, 1972, which imposed the "live stream" requirement on the City's and Corps' permits, also required the permittees to make measurements and studies concerning the timing and quantity of releases from Salinas Dam necessary to satisfy downstream prior rights (to replace the "live stream" requirement). The 1975 engineering study of Santa Margarita Lake referred to in paragraph 52 herein was such a study, providing information mainly applicable in the reach upstream of Paso Robles. The Board's own hydrogeologic findings, summarized in paragraph 52, provide additional information, especially on the reach downstream of Paso Robles. As a result, the "live stream" requirement, in its present form, may not continue to be the governing criteria concerning the protection of prior rights downstream of Salinas Dam. Therefore, since the "live stream" requirement was a major consideration in our findings herein, jurisdiction will be reserved in all permits to change the season of diversion and modify the terms and conditions therein.

Environmental Considerations

64. The State Board has prepared a Negative Declaration in accordance with the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.) and the State Guidelines for each of the applications considered herein. The Board finds that there will be no significant effect on the environment as a result of the projects.

Conclusions

65. From the foregoing findings, the Board concludes that all 25 applications considered should be approved, except for the direct diversion for irrigation purposes under Application 25989, which should be denied. Permits should be issued for each application subject to the conditions set forth in the order following.

ORDER

IT IS HEREBY ORDERED that all 25 applications considered in this decision be approved and that permits be issued to the applicants subject to vested rights. All permits shall contain applicable standard terms* (6, 10, 11, 12, and 13) in addition to the following conditions:

Applications 24533, 24826, and 25175:

1. Construction work shall begin within two years of the date of this permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

2. Construction work shall be completed by December 1, 1985.

All Applications:

Complete application of the water to the authorized use shall be made by December 1, 1986.

* The Board maintains a list of standard terms. Copies can be obtained upon request.

Application 24186:

The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 48 acre-feet per annum to be collected from November 1 of each year to May 1 of the succeeding year.

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

The maximum rate of diversion to offstream storage shall not exceed 1.8 cubic feet per second.

Application 24187:

The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a total of 48 acre-feet per annum to be collected from November 1 of each year to May 1 of the succeeding year as follows: (1) 23 acre-feet per annum in Reservoir No. 1, (2) 25 acre-feet per annum in Reservoir No. 2.

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

Application 24533:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 4 acre-feet per annum to be collected from November 1 of each year to April 30 of the succeeding year.

2. Permittee shall keep a record of the quantity of water pumped into the reservoir during the period from November 1 to May 1 and shall keep a record of the level of the reservoir at the beginning of each month during that period. Such records shall be supplied to the State Water Resources Control Board at least once each year.

Application 24656:

The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 2 acre-feet per year to be collected from January 1 to May 15 of each year.

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

Application 24766:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 22.4 acre-feet per annum to be collected from November 1 of each year to May 1 of the succeeding year.

2. To the extent that rights under Applications 23159, 24186, and 24187 are not satisfied by May 1 of each year, permittee shall, as soon as possible thereafter, release water stored under this permit during the current storage season.

Permittee shall install and maintain in his reservoir a staff gage meeting the approval of the State Water Resources Control Board for the purpose of determining water levels in the reservoir. Permittee shall supply the staff gage reading on or about October 31 of each year to the State Water Resources Control Board.

In no event shall permittee be obligated to release water stored under Application 23109, or to release water below the previous October 31 staff gage reading.

3. The total quantity of water diverted under this permit, together with that diverted under license issued pursuant to Application 23109, shall not exceed 42.4 acre-feet per annum.

Application 24773:

The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 20 acre-feet per year to be collected from January 1 to May 1 of each year.

Application 24819:

The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 16 acre-feet per year to be collected from January 1 to April 30 of each year.

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

Application 24826:

The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 6 acre-feet per annum to be collected from November 1 of each year to April 30 of the succeeding year.

Application 24886:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 49 acre-feet per annum to be collected from November 1 of each year to May 1 of the succeeding year.

2. To the extent that the reservoir under licensed Application 18205 does not fill by May 31 of each year, permittee shall, as soon as possible thereafter, release water stored during the current storage season.

Permittee shall install and maintain in his reservoir a staff gage meeting the approval of the State Water Resources Control Board for the purpose of determining water levels in the reservoir. Permittee shall supply the staff gage reading on or about October 1 of each year to the State Water Resources Control Board.

Permittee shall allow protestant Oberg or his designated representative reasonable access to the reservoir for the purpose of determining whether water should be released in accordance with this term. In no event shall permittee be obligated to release water below the previous October staff gage reading.

Application 24903:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 24 acre-feet per year to be collected from January 1 to May 1 of each year.

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

2. To the extent that Bald Mountain Reservoir, covered under licensed Application 18673, does not fill by April 30 of each year, permittee shall, as soon as possible thereafter, release water stored during the current storage season.

Permittee shall install and maintain in his reservoir a staff gage meeting the approval of the State Water Resources Control Board for the purpose of determining water levels in the reservoir. Permittee shall supply the staff gage reading on or about October 1 and December 31 of each year to the State Water Resources Control Board.

Permittee shall allow protestant Blythe or his designated representative reasonable access to the reservoir for the purpose of determining whether water should be released in accordance with this term. In no event shall permittee be obligated to release water below the previous October or December staff gage reading, whichever is lower.

Application 24986:

The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 4 acre-feet per year to be collected from January 1 to April 1 of each year.

Application 24990:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 12.6 acre-feet per annum to be collected from November 1 of each year to April 1 of the succeeding year.

2. Should a continuous surface flow of water not occur at least once during the period of November 1 to May 1 of each season in the natural stream channel between permittee's dam and the State Highway 58 crossing in Section 5, T29S, R14E, MDB&M, permittee shall release from his reservoir as soon after May 1 as feasible all water collected in his reservoir under this permit during the November 1 to April 1 season.

Permittee shall install and maintain a staff gage in his reservoir, and shall include in his annual progress report to the State Water Resources Control Board the staff gage reading on November 1 of each year.

On or before June 1 of each year, permittee shall report to the State Water Resources Control Board whether release of water was required by this condition, and if so, the date that said release was completed.

3. The total quantity of water diverted under this permit, together with that diverted under license issued pursuant to Application 23940 shall not exceed 22.6 acre-feet per annum.

Application 25044:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 4,419 gallons per day by direct diversion to be diverted from January 1 to May 15 of each year for domestic

and stockwatering purposes, and 2 acre-feet per year by storage to be collected from January 1 to April 1 of each year. The total amount of water to be taken from the source shall not exceed 4.4 acre-feet per water year of October 1 to September 30.

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

2. During the season specified in this permit for direct diversion, the total quantity and rate or water diverted under this permit and permittee's claimed existing right for the place of use specified in the permit shall not exceed the quantity and rate of diversion, respectively, specified in the permit. If the permittee's claimed existing right is quantified at some later date as a result of an adjudication or other legally binding proceeding, the quantity and rate of diversion allowed under this permit shall be the net of the face value of the permit less the amounts of water available under the existing right.

Permittee shall forfeit all rights under this permit if permittee transfers all or any part of his claimed existing right for the place of use covered by this permit to another place of use without the prior approval of the Board.

Permittee shall take and use water under the existing right claimed by permittee only in accordance with law.

3. In compliance with Section 5931 of the Fish and Game Code, permittee shall install and maintain in his dam a fishway, meeting the approval of the California Department of Fish and Game, to provide for safe passage of fish.

4. Permittee shall pay for the annual stocking of 100 yearling steelhead trout for a three year period in order to restore the steelhead run lost by construction of permittee's dam. Such stocking shall be done by the California Department of Fish and Game.

Application 25111:

The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 20 acre-feet per year to be collected from January 1 to April 30 of each year.

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

Application 25145:

The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 8 acre-feet per year to be collected from January 1 to May 1 of each year.

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

Application 25148:

The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 1 acre-foot per year to be collected from January 1 to April 1 of each year.

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

Application 25150:

The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 3 acre-feet per year to be collected from January 1 to May 1 of each year.

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

Application 25175:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 10 acre-feet per annum to be collected from December 1 of each year to April 1 of the succeeding year.

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

2. Should a continuous surface flow of water not occur at least once during the period of November 1 to May 1 of each season in the natural stream channel between the dam under licensed Application 23912 (in the SE¼ of Section 4, T29S, R14E, MDB&M) and the State Highway 58 crossing in Section 5, T29S, R14E, MDB&M, permittee shall release from his reservoir as soon after May 1 as feasible all water collected in his reservoir during the December 1 to April 1 season. Permittee shall coordinate all such releases with those required under licensed Application 23912 so that downstream facilities are not damged, and the intended purpose of providing for downstream prior rights is accomplished.

Permittee shall install and maintain a staff gage in his reservoir, and shall include in his annual progress report to the State Water Resources Control Board the staff gage reading on December 1 of each year.

On or before June 1 of each year, permittee shall report to the State Water Resources Control Board whether release of water was required by this condition, and if so, the date that said release was completed.

Application 25199:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 0.85 cubic foot per second by direct diversion and 49 acre-feet per year by storage from January 1 to May 15 of each year. The total amount of water to be taken from the source shall not exceed 275 acre-feet per water year of October 1 to September 30.

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

The maximum rate of diversion to offstream storage shall not exceed 1.75 cubic feet per second.

2. Water shall be diverted under this permit only when there is measurable surface flow in the Salinas River at the United States Geological Survey streamflow gage at Paso Robles. Prior to diverting water each year, permittee shall notify the State Water Resources Control Board that said condition exists.

3. Permittee shall include in his annual progress report to the Board, the beginning and ending dates of the various periods of diversion of water under this permit.

Application 25284:

The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a total of 8.5 acre-feet per year to be collected from January 1 to May 1 of each year as follows: (1) 6 acre-feet per year in upper reservoir, (2) 2.5 acre-feet per year in lower reservoir.

Application 25612:

The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 3 acre-feet per annum to be collected from November 1 of each year to April 1 of the succeeding year.

Application 25651:

The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 8 acre-feet per year to be collected from January 1 to April 1 of each year.

Application 25662:

The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 5 acre-feet per annum to be collected from October 1 of each year to June 1 of the succeeding year.

Application 25675:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 100 acre-feet per annum to be collected from October 15 of each year to March 31 of the succeeding year.

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

2. Water shall be collected to storage behind Eagle Ranch Dam only when there is surface flow from Atascadero Creek into Salinas River. Prior to diverting water each year, permittee shall notify the Board that said conditions exist.

3. The total quantity of water diverted under this permit, together with that diverted under permit issued pursuant to Application 24113, shall not exceed 300 acre-feet per annum.

Application 25989:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 600 gallons per day by direct diversion to be diverted from January 1 to May 15 of each year for domestic purposes, and 0.5 acre-foot per year to be collected from January 1 to March 31 of each year.

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

2. During the season specified in this permit for direct diversion, the total quantity and rate or water diverted under this permit and permittee's claimed existing right for the place of use specified in the permit shall not exceed the quantity and rate of diversion, respectively, specified in the permit. If the permittee's claimed existing right is quantified at some later date as a result of an adjudication or other legally binding proceeding, the quantity and rate of diversion allowed under this permit shall be the net of the face value of the permit less the amounts of water available under the existing right.

All Applications:

The State Water Resources Control Board reserves jurisdiction over this permit for the purpose of conforming the terms and conditions to later findings of the Board concerning stream flows required to reasonably protect vested rights. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

Applications 25284 and 25662:

After the initial filling of the storage reservoir(s), permittee's right under this permit extends only to water necessary to keep the reservoir(s)

full by replacing water lost by evaporation and seepage, and to refill if emptied for necessary maintenance or repair. Such right shall be exercised only during the authorized diversion season.

Applications 24533, 24766, 24773, 24826, 24886, 24986, 24990, 25612, and 25651:

After the initial filling of the storage reservoir(s), permittee's right under this permit extends only to water necessary to keep the reservoir(s) fully by replacing water beneficially used and water lost by evaporation and seepage, and to refill if emptied for necessary maintenance or repair. Such right shall be exercised only during the authorized diversion season.

Applications 24766, 24773, 24886, and 24990:

This permit is subject to the continuing authority of the State Water Resources Control Board to reduce the amount of water named in the permit upon a finding by the Board that the amount is in excess of that reasonably needed to be held in storage for the authorized uses. No action will be taken by the Board without prior notice to the owner and an opportunity for hearing.

Applications 24766, 24826, 25111, and 25175:

Permittee shall install and maintain an outlet pipe of adequate capacity in his dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir which is not authorized for appropriation under this permit may be released.

Applications 24656, 24773, 24819, 24986, 25044, 25145, 25148, 25150, 25284, 25651, and 25989:

Permittee shall, when required by the State Water Resources Control Board, install and maintain an outlet pipe of adequate capacity in his dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board,

in order that water entering the reservoir which is not authorized for appropriation under this permit may be released.

Applications 24886, 24903 and 25199:

The existing outlet pipe in permittee's dam shall be maintained in good working order.

IT IS FURTHER ORDERED that the direct diversion for irrigation purposes under Application 25989 be denied.

Dated: August 19, 1982

WE CONCUR:

L. L. Mitchell

L. L. Mitchell, Vice-Chairman

ABSENT

Carla M. Bard, Chairwoman

Jill D. Golis

Jill D. Golis, Member

F. K. Aljibury

F. K. Aljibury, Member