

Substance of the Permits

2. Application 10211 was filed by the United States of America (Department of the Army) on May 27, 1941, for direct diversion and storage of water from Salinas River for domestic use at Camp San Luis Obispo and municipal use of any surplus in the City of San Luis Obispo. Permit 5881 was issued on October 9, 1941, for direct diversion of 12.4 cubic feet per second (cfs) at Salinas Dam from January 1 to December 31 of each year and for storage of 45,000 acre-feet per annum (afa) in Salinas Reservoir (aka Santa Margarita Reservoir) to be collected from November 1 of each year to June 30 of the following year. The U. S. Corps of Engineers (Corps) constructed the facilities under this permit and continues to operate them through the San Luis Obispo County Flood Control and Water Conservation District.

3. Application 10216 was filed by the City of San Luis Obispo (City) on June 4, 1941, for direct diversion and storage of water from Salinas River for municipal use in and around the City of San Luis Obispo. The requested appropriation was for water not required for use by Camp San Luis Obispo under Application 10211. Permit 5882 was issued on October 9, 1941, for direct diversion of 12.4 cfs at Salinas Dam from January 1 to December 31 of each year and for storage of 45,000 afa in Salinas Reservoir to be collected from November 1 of each year to June 30 of the following year. Under terms of the permit the total amount of water to be diverted under this permit and Permit 5881 of the Corps shall not exceed 12.4 cfs by direct diversion and 45,000 afa by storage.

4. Application 11745 was filed by San Luis Obispo County Waterworks District No. 6 (County) on February 26, 1947, for direct diversion and storage of water from Salinas River for municipal use in the general area of the community of Santa Margarita. Permit 7253 was issued on January 27, 1949, for direct diversion of 1.5 cfs at Salinas Dam from January 1 to December 31 of each year and for storage of 200 afa in Salinas Reservoir to be collected from November 1 of each year to June 30 of the following year.

Past Proceedings

5. Salinas Dam and Reservoir and associated water delivery facilities were constructed by the Corps and put into operation in July of 1942. Several extensions of time to complete application of water to the proposed use were granted on the subject permits. On June 1, 1972, the Board issued its order, which, among other things, extended time to complete use of water and imposed clarifying permit terms. The following provisions of that order are central to the current proceedings:

"1. Time to complete use of water under Permit 5881 of the U. S. Corps of Engineers and Permit 5882 of the City of San Luis Obispo is extended to December 1, 1981.

"2. Permits 5881 and 5882 are amended to include the following clarifying terms and conditions for the protection of downstream prior vested rights:

a. Permittee shall release water into the Salinas River channel from Salinas Reservoir in such amounts and at such times and rates as will be sufficient, together with inflow from downstream tributary sources, to supply downstream diversions of any surface flow under vested prior rights to the

extent water would be available for such diversions without the regulation of Salinas Dam and sufficient to maintain percolation of water from the stream channel as such percolation would occur without the regulation of Salinas Dam, in order that operation of Salinas Dam shall not reduce natural recharge of water into the Salinas River alluvial gravels downstream to the confluence of the Nacimiento River with the Salinas River.

This condition shall be assumed to be met during such time as there exists a visible surface flow in the Salinas River between Salinas Reservoir and the confluence of the Nacimiento River.

b. Until further order of the Board, permittee shall make or cause to be made suitable field measurements and studies and shall provide any measuring facilities necessary to determine the amount of water, timing, and rate of releases of water into the Salinas River channel below Salinas Dam required to comply with the preceding condition and shall report to the Board annually, or at such other times as the Board may require, such measurements and studies and the cumulative results.

c. The Board, either upon the request of the permittee or any party or on its own motion, may and shall, prior to the issuance of license, hear, review, and make such further and different orders as may be required concerning proper releases of water for downstream use and recharge of groundwater and concerning the measurements and studies to be conducted by or on behalf of permittee until a final determination and order can be made concerning the amounts, timing, and rates of releases of water into Salinas River in satisfaction of downstream rights.

"3. The time to complete use of water under Permit 7253 of San Luis Obispo County Water District No. 6 is extended to December 1, 1981, provided, however, a valid contract is negotiated with the Corps of Engineers for storage of water in Salinas Reservoir by July 1, 1973."

6. Pursuant to the City's petition for reconsideration of the June 1, 1972, order, the Board, on October 5, 1972, amended Paragraph 2 of that order as follows:

"a. Permittee shall release water into the Salinas River channel from Salinas Reservoir in such amounts and at such times and rates as will be sufficient, together with inflow from downstream tributary sources, to supply downstream diversions of any surface flow and groundwater extractions under prior vested rights. Until further order of this Board it will be conclusively presumed that prior vested downstream rights will be met if at all times either a visible surface flow exists in the Salinas River between the Salinas Reservoir and the confluence of the Nacimiento River or the total inflow to the Salinas Reservoir is released therefrom into the channel of the Salinas River below the Salinas Dam. The foregoing is not intended to preclude other operational criteria that will fully satisfy prior vested downstream rights.

"b. No change.

"c. The Board either upon the request of the permittee or any holder of a prior vested downstream right, or on its own motion, may and, no later than July 1, 1974, shall hear, review, and make such further and different orders as may be required concerning releases of water into the Salinas River below Salinas Dam to assure that prior vested downstream rights are satisfied and concerning the measurements and studies to be conducted by or on behalf of permittee until a final determination and order can be made concerning the amounts, timing, and rates of releases."

7. In accordance with Paragraph 2.c. of the October 5, 1972, amendment, a hearing was held on April 30, 1974 to (1) consider further the regimen of releases of water into the Salinas River below Salinas Dam (sometimes referred to herein as the "live stream concept"), as required by Paragraph 2.a. of the June 1, 1972, order, as amended on October 5, 1972; and (2) ascertain whether a contract had been negotiated between the Corps and County, as required in Paragraph 3 of the June 1, 1972, order. Because field measurements and studies, as required by Paragraph 2.b. of the June 1, 1972, order, had not been made, and

because all parties agreed, the Board issued Order WR 74-20 on June 20, 1974, extending the date for further consideration to not later than July 1, 1977.

8. On April 8, 1975, CH2M Hill, a consultant for the Corps, completed a study on the Salinas Dam-Santa Margarita Reservoir project entitled "Water Supply Yield Study". This study was undertaken to determine the safe yield from Santa Margarita Reservoir, taking into consideration the Board's order to meet prior vested downstream rights as stated in Paragraph 2.a. of Board order of June 1, 1972, as amended October 5, 1972. Flow into and downstream of Santa Margarita Reservoir and recharge of the downstream groundwater basin were analyzed. The report recommends that in order to meet the requirements of the Board orders, the inflow to Santa Margarita Reservoir should be released at all times when there is zero flow in the reach of the Salinas River between the dam and the confluence with the Nacimiento River. The report states that the flow at the USGS gauge at Paso Robles is indicative of the flow in the Salinas River throughout this reach. The report further recommends that the effects of the suggested operating plan on the flows below the dam should be monitored in detail for a period of 3 to 5 years, in order to determine adjustments that may be necessary to more closely meet the Board's requirements.

9. The "Water Supply Yield Study" was submitted to the Board for review and comment on March 31, 1976. By letter of

May 24, 1976, to the Corps, Board staff indicated that the study did not contain sufficient justification to conclude that the flow in the Salinas River at the USGS gauge at Paso Robles is indicative of the flow in the river throughout the reach from Salinas Dam to the Nacimiento River. Recharge of the groundwater basin from Paso Robles to the Nacimiento River had not been adequately correlated with the existence of a surface flow in the river at Paso Robles. No additional information or replies to the staff's comments in this matter have been received.

10. Early in 1977, the City conducted negotiations with several interested agencies to develop criteria for the operation of Salinas Dam which would replace the "live stream concept" contained in the above-mentioned Board orders. In order to continue these negotiations, the City petitioned the Board on May 18, 1977, to extend the date for further hearing and order concerning releases of water into the Salinas River from Salinas Dam, as required by Board Order WR 74-20, from July 1, 1977, to November 1, 1977. By letter of June 13, 1977, the County, which in addition to holding Permit 7253, operates Salinas Dam and Reservoir for the Corps, joined in the request for an extension of time. Pursuant to these requests, the Board issued Order WR 77-6 dated June 16, 1977, extending the date for further hearing and order from July 1, 1977, to November 1, 1977.

Present Proceedings

11. On September 20, 1977, a public hearing was held in Sacramento on Permits 5881, 5882, and 7253. Appearances and presentations were made by the City of San Luis Obispo (Permit 5882); San Luis Obispo County Water Works District No. 6 (Permit 7253) and San Luis Obispo County Flood Control and Water Conservation District as operator of Salinas Reservoir for the Corps (Permit 5881) (one witness represented both county agencies); and the City of Paso Robles and the Atascadero Mutual Water District (one attorney represented both of these entities). A representative of the Corps was present at the hearing but did not make a presentation.

12. The purpose of the hearing was to resolve two issues. First, with reference to Permits 5881 and 5882, whether new and different orders are required concerning releases of water into the Salinas River below Salinas Dam for protection of prior vested downstream rights, and concerning measurements and studies to be conducted by or on behalf of permittees, as required by the June 1, 1972, order, as amended. Second, with reference to Permit 7253, to consider the matter of compliance with Condition 3 of the order of June 1, 1972, as amended, which required negotiation of a valid contract with the Corps by July 1, 1977.

13. The hearing record was held open until October 17, 1977, for submission of recommendations by the parties for modifying the current terms and conditions. Recommendations were received from the City, the County, and the City of Paso Robles/Atascadero

Mutual Water District. Transco Products, Inc., applicant on Application 24773 to appropriate water from a tributary of the Salinas River between Salinas Dam and the Nacimiento River, also submitted a recommendation. The City has protested this and several other applications on the basis that any new appropriators from sources within the Salinas River drainage tributary to the stated reach should also be required to contribute water for the protection of prior vested downstream rights, as the City is required to do under the June 1, 1972, order, as amended.

14. The closing of the official record of the public hearing on October 17, 1977, did not provide sufficient time to issue a further Board order in this matter by November 1, 1977, as required by Order WR 77-6 dated June 16, 1977. Consequently, Order WR 77-11 was adopted by the Board on October 20, 1977, extending the date for further order to March 1, 1978.

FINDINGS AND CONCLUSIONS

Permits 5881 and 5882

15. The "Water Supply Yield Study" prepared for the Corps represents the only attempt at compliance with Paragraph 2.b. of the June 1, 1972 order, as amended. The study is deficient; the conclusion therein that the flow in the Salinas River at the USGS gauge at Paso Robles is indicative of the flow in the river throughout the reach from Salinas Dam to the Nacimiento River is not sufficiently justified. Specifically, recharge of the

groundwater basin from Paso Robles to the Nacimiento River has not been adequately correlated with the existence of a surface flow in the river at Paso Robles. There is no indication that the stated deficiencies in the study will be corrected, or that a new study is contemplated. Therefore, the study does not provide sufficient information from which to develop alternate operating criteria for Salinas Reservoir, and such information does not appear to be forthcoming.

16. Recent attempts by local agencies to reach an agreement on alternate operating criteria for Salinas Reservoir have failed. No such criteria were presented at the hearing or in the recommendations submitted while the hearing record was held open. Nor does it appear that such criteria is forthcoming.

17. Since this Board has granted several opportunities for the development of new studies and recommendations for alternate operating criteria, and since such studies and recommendations are not imminent, there is no reason to schedule further hearings on this matter. However, no purpose is served by foreclosing the possibility of the parties reaching an acceptable agreement. Therefore, the "live stream concept" embodied in Paragraph 2 of the June 1, 1972, order, as amended, should remain in effect. In the event new studies or operating criteria are developed, the parties should be able to submit such information or proposals to the Board, and the Board may hold additional hearings on the matter.

Permit 7253

18. Permittee San Luis Obispo County Waterworks District No. 6 has failed to negotiate a valid contract with the Corps for storage of water in Salinas Reservoir by July 1, 1977, as required by Paragraph 3 of the June 1, 1972, order, as amended. According to the County, there are three reasons why this condition has not been met. First, a draft agreement was submitted to the Corps after the 1972 Board orders, but the Corps considered any such agreement to be premature until the studies required by the 1972 orders were completed. Such a study was completed in 1975 (the "Water Supply Yield Study" discussed above), at which time the County commented to the Corps concerning the study's deficiencies. The Corps has not responded to these comments, or those submitted by the Board.

19. Second, the City has a long-term "license" with the Corps for use of water from Salinas Reservoir. The Corps has not been using any water from Salinas Reservoir for many years. Consequently, the City has been using the full yield. The County now believes that it is possible to effectuate an agreement with the Corps to store water in the reservoir under Permit 7253, despite the long-term license. The City has an alternate water supply from Whale Rock Reservoir. The County believes that the

combined yields of Salinas and Whale Rock Reservoirs exceed the current needs of the City, and that the surplus could be available to the County. The amounts of such surplus could be determined on a year-by-year basis.

20. Third, the County was not certain it had the support of the project's beneficiary, the community of Santa Margarita. However, recent communication with members of the community indicates unanimous support that Permit 7253 remain in effect and that the County pursue an agreement with the Corps to store water in Salinas Reservoir.

21. While these facts do not demonstrate vigorous efforts by the County at reaching an agreement with the Corps for storage of water in Salinas Reservoir in accordance with the proviso in Paragraph 3 of the June 1, 1972, order, as amended, no purpose is served by rescinding the extension of time in that order and revoking the permit at this time. While groundwater wells have met the requirements of the community of Santa Margarita in recent years, there is evidence that such will not be the case in the near future. The Santa Margarita Ranch, which represents a substantial land holding adjacent to the community, has not irrigated with groundwater for the past ten years, but intends to do so again soon. Such irrigation could significantly draw down the water table in the vicinity of the community's wells. Further, the County's General Plan for the

Santa Margarita area allows for a 300 percent increase in population, with a resulting increase in water use. Since the water provided for in the permit could still serve a beneficial purpose, and since it does not appear that other vested rights will be injured, the extension of time to complete use of water by December 1, 1981, granted in the June 1, 1972, order, as amended, should be allowed to stand. The agreement with the Corps to store water in Salinas Reservoir should be reached by the end of the extension period, which is December 1, 1981.

22. From the foregoing findings, the Board concludes that the "live stream concept" embodied in Paragraph 2.a. of the June 1, 1972, order should remain in effect, and that any new studies or operating criteria for Salinas Reservoir developed by the parties may be submitted to the Board for appropriate action. It is further concluded, that the extension of time granted under Permit 7253 should remain in effect, and that the matter of successfully contracting with the Corps should be deferred until December 1, 1981.

ORDER

IT IS HEREBY ORDERED that Board order dated June 1, 1972, as amended October 5, 1972; June 20, 1974 (WR 74-20); June 16, 1977 (WR 77-6); and October 20, 1977 (WR 77-11), be further amended as follows:

1. Paragraph 2.b. of said order is amended to read:

"b. Permittee may make or cause to be made suitable field measurements and studies and may formulate recommendations concerning the amount of water, timing, and rate of releases of water into the Salinas River channel below Salinas Dam to aid in reaching the objectives of Paragraph 2.a. above. Such measurements, studies, and recommendations submitted to the Board will be reviewed and the Board may hear, consider, and make such further and different orders as it deems necessary concerning releases of water into the Salinas River below Salinas Dam to assure that prior vested downstream rights are satisfied."

2. Paragraph 2.c. is deleted.

3. Paragraph 3 is amended to read:

"3. The time to complete use of water under Permit 7253 of San Luis Obispo County Water Works District No. 6 is extended to December 1, 1981. Failure to negotiate a valid contract with the Corps of Engineers for storage of water in Salinas Reservoir by this date raises a presumption of lack of diligence by permittee in completing its use of water."

Dated: February 14, 1978

WE CONCUR:

/s/ W. W. ADAMS
W. W. Adams, Member

/s/ JOHN E. BRYSON
John E. Bryson, Chairman

/s/ W. DON MAUGHAN
W. Don Maughan, Vice Chairman