

Hearings Program

Salinas Reservoir - Permit 5882 (Application 10216)

Notice of Public Hearing - Petition for Extension of Time

October 12-13, 1999

City of San Luis Obispo and U.S. Army Corps of Engineers
Salinas River in San Luis Obispo County

* The hearing will commence immediately following the proceeding on Permit 7253 (Application 11745) of San Luis Obispo County Waterworks District #6.

First-Floor Hearing Room
State Water Resources Control Board
Paul R. Bonderson Building
901 P. Street, Sacramento

SUBJECT OF HEARING

The purpose of this hearing is to receive evidence which will assist the State Water Resources Control Board (SWRCB) in determining whether to approve the petition for extension of time filed by the City of San Luis Obispo (City) for Permit 5882 (Application 10216).

BACKGROUND

The United States Army Corps of Engineers owns the Salinas Reservoir project. The reservoir was originally constructed with a storage capacity of 45,000 af, but storage historically has been limited to approximately 23,000 af due to seismic concerns.

The state issued Permit 5882 to the City on October 9, 1941 and in 1995 amended the permit to list the U.S. Corps of Engineers (Corps) as a co-permittee. Permit 5882 authorizes direct diversion of 12.4 cubic feet per second from the Salinas River from January 1 to December 31 of each year and collection to storage of 45,000 acre-feet (af) per annum in the Salinas Reservoir from November 1 of each year to June 30 of the following year. As amended in 1972, Permit 5882 contains a presumption that prior vested downstream rights will be met if a visible surface flow (live stream) exists at all times along a certain stretch of the Salinas River below the Salinas Reservoir. The live stream requirement must be met at all times that the City is diverting water pursuant to Permit 5882.

The state previously has granted the City extensions of time to complete construction work and the full beneficial use of water. The last extension of time required the City to complete construction work by September 30, 1970 and complete full beneficial use of water by December 1, 1981. In 1981, the City petitioned the SWRCB for a ten-year time extension to complete construction work and apply the water to the proposed use. The Division of Water Rights deferred action on the petition until the City complied with the requirements of the California Environmental Quality Act (CEQA). The City filed another petition for extension of time in 1991.

The City plans to increase the reservoir capacity to approximately 42,000 af if the SWRCB grants the time extension. The expansion project includes both upgrading the dam to enhance its resistance to seismic activity and installing a spillway gate or other device to allow storage up to nearly the permitted amount of 45,000 af in the existing facility. The City certified a final Environmental Impact Report (EIR) for the reservoir expansion project in June 1998.

The California Sportfishing Protection Alliance (CSPA) has protested the City's petition for extension of time on several grounds. First, CSPA alleges that Permit 5882 may have impacts on the public trust assets of the Salinas River. CSPA states that the SWRCB should amend Permit 5882 and order terms and conditions to protect fish and wildlife resources affected by the diversion and storage of water. Second, CSPA alleges that the additional storage of water in the reservoir may result in adverse impacts on fish and wildlife resources in the Salinas River and at the reservoir. Third, CSPA alleges that the City has not put the permitted water to full beneficial use since 1941. CSPA requests that the SWRCB amend the City's permit and limit the amount of water to the amount currently put to beneficial use. CSPA also states that the SWRCB should require the City to file a new water right application for the reservoir expansion project and require the City to prepare an EIR for the project in conjunction with the new application.

The City has not filed a change petition seeking authorization to modify the existing live stream condition of Permit 5882. Accordingly, this hearing is limited to consideration of the time extension petition filed by the City, including consideration of any bypass flow conditions a party contends are necessary to avoid or mitigate any adverse impacts resulting from changes that would result from approval of the time extension. The SWRCB will not entertain in this proceeding any requests to modify the live stream condition of Permit 5882 as applied to the continuation of the City's existing diversions.

KEY ISSUES

1. Should the SWRCB approve the City's petition for extension of time?
2. Has the City demonstrated good cause for an extension of time?
 - a. Has the City demonstrated that it has exercised due diligence?
 - b. Has the City demonstrated that its failure to comply with previous time requirements has been occasioned by obstacles that could not be reasonably avoided?
 - c. Has the City demonstrated that satisfactory process will be made if an extension of time is granted?

- d. Has the City demonstrated conditions that are incident to the project and not to the City itself as cause for delay?
 - e. How does the City's status as a municipal appropriator affect the determination whether an extension should be approved?
3. As a responsible agency, what actions should the SWRCB take to review the City's petition consistent with the requirements of CEQA?
 4. If the SWRCB grants an extension of time to the City, what period of time is appropriate?
 5. If the SWRCB grants an extension of time to the City, what conditions, if any, would be in the public interest? Should the permit be modified to reflect the 42,000 af size of the City's proposed project? Should there be a limit on the quantity beneficially used each year under the permit?
 6. If the SWRCB does not grant an extension of time to the City, should the SWRCB find that there is cause to partially revoke the City's permit?
 7. Will approval of the petition result in adverse impacts on public trust resources? What conditions, if any, should the SWRCB adopt to avoid or mitigate any adverse impacts on public trust resources that would otherwise occur as a result of approval of the petition?

HEARING PARTICIPATION

A SPECIAL NOTE IF YOU WANT TO TAKE PART IN THIS HEARING: All those persons who plan to participate in this hearing should carefully read the enclosure entitled "Information Concerning Participation in Hearing on Water Rights". As stated in that enclosure, parties intending to present evidence at the hearing must submit a "Notice of Intent to Appear" which must be RECEIVED by the Board on or before 4:00 p.m. September 24, 1999.

Questions concerning this notice may be directed to Katherine Mrowka at (916) 657-1951. FAX # (916) 657-1485.

PARKING AND ACCESSIBILITY

Public parking is available in the State Garage on 10th Street between O and P Streets, in metered spaces on area streets, and in the public parking garages on L Street between 10th and 11th Streets and on P Street between 11th and 12th Streets.

The Paul R. Bonderson building first-floor hearing room is accessible to persons with disabilities.

/s/ by

Maureen Marché
Administrative Assistant to the Board

Enclosures

Date: September 15, 1999

Mailing List

Permittee

Gary Henderson, City of San Luis Obispo, 955 Morro Street, San Luis Obispo, CA 93401

Legal Counsel For Permittee: Rob Saperstein, Hatch and Parent, 21 East Carrillo Street, Santa Barbara, CA 93101,

Protestant

Robert J. Baiocchi, California Sportfishing Protection Alliance, P.O. Box 357, Quincy, CA 95971

Legal Counsel For Protestant: Lorraine M. Scarpace, Attorney at Law, P.O. Box 1981, Paso Robles, CA 92447

Supplemental Mailing List

- Atascadero Mutual Water Company, Kenneth Weathers, P.O. Box 6075, Atascadero, CA 93423
- N. Donald Mitchell, P.O. Box 3731, Carmel, CA 93921
- Otto E.R. Schmidt, P.O. Box 9, Santa Margarita, CA 93453
- Richard and Eloise Migliore, 933 E. Thousand Oaks Boulevard, Thousand Oaks, CA 91360
- Vincent and Ruth Sullivan, 6750 York Mountain Road, Templeton, CA 93465
- George E. and Nancy Lehnhoff, Route 1, Box 85, Templeton, CA 93465
- Rich and Carrie Lehnhoff, Route 1, Box 85, Templeton, CA 93465
- Frank Ricigliano, 6480 York Mountain Road, Templeton, CA 93465
- Susan M. Sullivan, 6480 York Mountain Road, Templeton, CA 93465
- Frank and Arlene Oster, 6660 Highway 58, Santa Margarita, CA 93453
- Frieda Ostini, 665 Volpi Ysabel, Paso Robles, CA 93446
- Rex Hendrix, P.O. Box 6062, Atascadero, CA 93423
- John Tannehill, 3010 Vineyard Canyon Road, San Miguel, CA 93451
- Theodore and Elizabeth Jones, 4875 Monterey Road, Paso Robles, CA 93446
- City of Paso Robles, Frank Mechem, 1000 Spring Street, Paso Robles, CA 93446
- George Work, Estrella Route, Box 4675, San Miguel, CA 93451
- Virginia Cahill, McDonough, Holland and Allen, 555 Capitol Mall, Suite 950, Sacramento, CA 95814
- Jennifer Knight, The Tribune, 840-11th Street, Paso Robles, CA 93446
- Alan Lilly, Bartkiewitz, Kronick & Shanahan, 1011 22nd Street, Suite 100, Sacramento, CA 95816
- Felix Smith, 4720 Talus Way, Carmichael, CA 95608
- Fred Strong, F. Strong Associates, P.O. Box 3621, Paso Robles, CA 93447-3621
- Kenneth Weathers, P.O. Box 6075, Atascadero, CA 93423
- Alan Young, P.O. Box 64, Shandon, CA 93461

Information Concerning Appearance at Water Rights Hearings

The following procedural requirements will apply to this hearing and will be strictly enforced by the State Water Resources Control Board (SWRCB). Failure to submit witness information and exhibits in a timely manner may be interpreted by the SWRCB as intent not to appear.

1. **PARTIES:** A person who wishes to participate in the hearing as a party and present evidence must submit a notice of intent to appear, written testimony, and exhibits, in accordance with the requirements set forth below, with a request to be designated a party to the hearing.

A person who wishes only to present only a policy statement, either orally or in writing, will be considered an interested person and not a party to the hearing. A person who wishes to present a policy statement is requested to file a Notice of Intent to Appear and follow the requirements governing policy statements (see item 6a below).

2. **NOTICE OF INTENT TO APPEAR:** Parties and interested persons must submit to the SWRCB a written Notice of Intent to Appear (notice) (form enclosed). If there is any change in the hearing schedule, only those persons who have filed a notice will be informed of the change.

The notice must include the name and address of the party or interested person, or the name of the party's or interested person's representative. An interested person should clearly indicate on the notice his or her intent to make a policy statement only. A person who wishes to participate as a party must also include the name of each witness who will testify on the party's behalf, together with a description of the proposed testimony and the estimated amount of time required by the witness to present an oral summary of his or her testimony, which must be submitted in writing as described in item 3, below. For each expert witness, a statement of qualifications should be attached.

The SWRCB must receive six copies of the notice by 4:00 p.m. on September 24, 1999. Following receipt of the notices, the SWRCB will compile and mail out a list of parties to exchange information that is composed of the persons who submitted a notice and intend to present evidence. Only a party who has submitted a notice will be included on the list of parties to exchange information. No later than October 1, 1999, each party shall serve a copy of the party's notice, along with exhibits, on each of the parties identified on the list.

3. **WRITTEN TESTIMONY:** Each party proposing to present testimony on factual or other evidentiary matters at the hearing must submit the testimony in writing. Written testimony is, and will be treated as, an exhibit (see item 4 below). Oral testimony that goes beyond the scope of written testimony may be excluded.
4. **EXHIBITS:** Each party shall submit six copies of the party's exhibits to the SWRCB and serve one copy on each of the other parties included on the list of parties to exchange information. The written testimony of each witness, and the statements of qualifications for expert witnesses, are

considered to be exhibits. All written testimony, statements of qualifications, other exhibits, and a complete list of exhibits must be received by the SWRCB no later than 4:00 p.m. on October 1, 1999 and served on the other parties by mail on or before that date. A statement of service, which indicates the manner of service on the parties, shall be filed with each party's exhibits.

Each party also shall complete and submit the attached exhibit identification index with the party's exhibits. The Status of Evidence column will be completed by the SWRCB during the course of the hearing.

Proposed exhibits are subject to the following requirements:

- a. Information based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
- b. In accordance with California Code of Regulations, title 23, section 648.3, public records of the SWRCB and documents or other evidence that have been prepared and published by a public agency, if otherwise admissible, may be submitted as exhibits by reference provided that the original or a copy is in the possession of the SWRCB.
- c. If documents are submitted as exhibits by reference, the parties offering such documents shall advise the other parties with whom exhibits must be exchanged of the titles of the documents, the particular portions on which they rely, the nature of the contents, the purpose for which the exhibit will be used when offered into evidence, and the specific file folder or other exact location in SWRCB's files where the document(s) may be found.
- d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.

5. **RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code section 11513.

6. **ORDER OF PROCEEDING:** The hearing will be conducted in accordance with California Code of Regulations, title 23, section 648.5 and the following specific rules.

- a. **POLICY STATEMENTS:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the SWRCB will provide an opportunity for presentation of policy statements or comments by interested persons who are not participating as parties in the proceeding. A policy statement is a non-evidentiary statement that may include the speaker's policy views or non-expert analysis of evidence that already has been presented. Policy statements will be heard first.

Policy statements are not subject to the pre-hearing requirements for exhibits set forth above. All persons wishing to make policy statements, however, are requested to file a Notice of Intent to Appear on the enclosed form indicating clearly an intent to make only a policy statement.

Persons making policy statements will not be sworn or asked to affirm the truth of their statements, and they must not attempt to use their statements to present evidence of facts, either orally or by introduction of written exhibits. At the discretion of the hearing officer, questions may be addressed to persons making policy statements for the purpose of clarifying their statements. Persons making policy statements, however, are not subject to cross-examination.

Time limitations of five minutes or less will be imposed on policy statements. Persons making policy statements are encouraged to have written copies of their statement available at the time they speak for distribution to the SWRCB.

- b. **OPENING STATEMENTS:** All parties who present evidence in the hearing may make an opening statement. Oral presentation of an opening statement will be limited to 20 minutes for each party. An opening statement may also be submitted in writing. Parties should use their opening statements to explain the objectives of their case, the major points that will be made, and the relationship between the major points and the key issues. An opening statement may include any policy-oriented statements that the party wishes to make.
- c. **PRESENTATION OF EACH PARTY'S CASE-IN-CHIEF:** Each party shall present one case-in-chief addressing the key issues identified in the hearing notice. The presentation shall include all written testimony and other exhibits. Oral presentation of the direct testimony of each witness shall be limited to a maximum of 20-minutes per witness, not to exceed a total of two hours for all witnesses presented by a party. The time allowed for the presentation of a party's case-in-chief may be extended upon a showing of good cause. The hearing officer will limit presentation of redundant testimony.

All witnesses presenting testimony must appear at the hearing. Each witness shall identify his or her written testimony, affirm that the testimony is true and correct, and briefly summarize the major points in the testimony. Written testimony may not be read into the record. The written testimony shall be treated as direct testimony in its entirety.

- d. **CROSS-EXAMINATION:** Immediately following the presentation of each party's

case-in-chief, the party's witnesses will be subject to cross-examination by the other parties, SWRCB members, and SWRCB staff. Witnesses may be cross-examined on subjects that were not covered in their direct testimony.

If a party presents multiple witnesses on a given subject area or closely related subject areas, those witnesses may be subject to cross-examination as a panel, at the discretion of the hearing officer. Cross-examination will be limited to 20-minutes per witness or panel of witnesses, for each party conducting cross-examination. The time allowed for cross-examination will be extended upon a showing of good cause demonstrated in an offer of proof. Redirect examination and recross examination may be permitted for good cause at

the discretion of the hearing officer.

e. **REBUTTAL EVIDENCE:** Parties will have the opportunity to present rebuttal evidence. Parties must not use the opportunity to present rebuttal evidence to attempt to present new evidence that should have been included in the case-in-chief, or to present repetitive evidence. All rebuttal evidence will be subject to cross-examination.

f. **CLOSING ARGUMENTS:** Oral closing statements shall not be made. The hearing officer may provide an opportunity for submission of written closing statements or legal briefs following the close of the hearing. If the hearing officer provides this opportunity, six copies of any closing statements or legal briefs shall be submitted to the SWRCB and one copy shall be mailed to each of the parties required to exchange information for this hearing. The schedule for submission of closing statements and legal briefs will be decided by the hearing officer at the close of the hearing.

7. **EX PARTE COMMUNICATION:** During the pendency of the proceeding, commencing no later than the issuance of the Notice of Hearing, there will be no ex parte communications between SWRCB members or staff and any of the parties or interested persons regarding substantive issues within the scope of the proceeding. Communications regarding noncontroversial procedural matters will be permitted, but ordinarily should be directed to SWRCB staff and not to SWRCB members.

8. **CONDUCT OF PROCEEDING GENERALLY:** The proceeding will be conducted as provided herein and in accordance with the procedures for adjudicative proceedings set forth in California Code of Regulations, title 23, sections 648-648.8, 649.6, and 760.

Materials submitted to the SWRCB should be addressed as follows:

Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000
Attn: Katherine Mrowka

Documents to be Offered into Evidence

The following items will be offered, by reference, as staff exhibits at the hearing on the City's petition for extension of time:

1. All files related to permitted Application 10216.
2. Topographic maps and flow records published by the United States Geological Survey for the Salinas River and vicinity.

3. Final Environmental Impact Report for the Salinas Reservoir Expansion Project.
4. Draft Environmental Impact Report for the Salinas Reservoir Expansion Project.
5. Revised Draft Environmental Impact Report for the Salinas Reservoir Expansion Project.

Staff Summary of the Record

Substance of Permitted Application 10216

Applicant: City of San Luis Obispo and U.S. Army Corps of Engineers

Source: Salinas River

Amount: 12.4 cubic feet per second direct diversion, 45,000 afa storage

Season: January 1 to December 31 (direct diversion)

Storage Period: November 1 to June 30

Purpose: Municipal, incidental power

Place of Use: City of San Luis Obispo and vicinity including Cuesta Junior College and environs described as being within T30S, R11E, T30S, R12E, T31S, R12E, T31S, R13E, all within MDB&M

Point of Diversion: Within NW 1/4 of NW 1/4 of Section 8, Township 30 South, Range 14 East, MDB&M

Salinas Reservoir was constructed in 1941 by the Corps to provide a domestic water supply to Camp San Luis Obispo. The Corps constructed the Salinas Dam and Reservoir on the Salinas River about nine miles upstream from the town of Santa Margarita in San Luis Obispo County. The water conveyance system at the dam is used to transport water to the City and environs where it is utilized under Permit 5882 of the City. The City currently obtains the full yield of the reservoir from the Corps pursuant to a contract with the Corps. The original water supply contract was entered into in 1943 and subsequent contracts have extended the agreement through the present. The Corps is not utilizing any water pursuant to Permit 5882.

Five permits were issued by the state for storage and direct diversion at Salinas Reservoir. The original permittees included the Corps (Permit 5881), the City (Permit 5882), the City of Paso Robles (Permit 8471), San Luis Obispo County Waterworks District No. 6

(Santa Margarita) (Permit 7253) and San Luis Obispo County Waterworks District No. 5 (Templeton) (Permit 8964). By Order dated June 1, 1972, the SWRCB revoked

Permits 8471 and 8964 of the City of Paso Robles and Templeton. Permit 5881 of the Corps was revoked on August 7, 1995 when the Corps was listed as a co-permittee on Permit 5882 of the City. The Division of Water Rights has issued a notice of revocation for Permit 7253 of Santa Margarita. The 1972 and 1995 Orders clarified which entities are permitted to utilize the water resources developed by the Salinas Reservoir Project.

A description of how the City intends to continue its development of water resources under Permit 5882 is found in the background section of the Hearing Notice.