

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
APPLICATION 24186, ET AL.,

CITY OF SAN LUIS OBISPO, ET AL.,

Protestants

Order: WR 82-12
Sources: Various (Tributary
to Salinas River)
Counties: San Luis Obispo
Monterey

ORDER DENYING PETITION FOR RECONSIDERATION

BY THE BOARD:

The Board having adopted Decision 1585 on August 19, 1982, approving 25 applications on tributaries to the Salinas River; the Board having received a Petition for Reconsideration of Decision 1585 on behalf of Transco Products, Inc., applicant for Application 24773; the petition having been duly considered, the Board finds as follows:

Substance of Application 24773

1. Application 24773 requested diversion for onstream storage of 20 acre-feet per annum from an unnamed stream tributary to Jack Creek, to be collected between December 1 of each year and May 1 of the succeeding year for stockwatering, recreation, and fire protection purposes.
2. Decision 1585 approved Application 24773 for a diversion season of January 1 to May 1 of each year.

Substance of Petition for Reconsideration

3. Petitioner contends that inclusion of the following term in the permit for Application 24773 is not substantiated by the record in this matter:

"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."

4. Petitioner specifically claims that:

(a) Water released from the dam under Application 24773 during low flow periods would do nothing more than be captured and stored in one or both of two existing downstream reservoirs, neither of which are owned by protestants;

(b) Considering the above, there is no possibility that any waters stored under Application 24773 could in any way affect the existence of a "live stream" in the Salinas River, which is the sole reason for the term; and

(c) Installation of the outlet works would be costly, difficult to achieve, and would not accomplish any of the purposes for which the condition was imposed.

Downstream Reservoirs

5. As claimed by the petitioner, and as noted in Finding 44 of Decision 1585, two on-stream reservoirs exist downstream of petitioner's reservoir. Diversion at those facilities is under the following appropriations:

(a) Licensed Application 17859 of Marshall W. Sawyer, Trustee authorizes storage of 34 acre-feet per annum in Jack Creek, about 0.8 mile downstream of petitioner's reservoir, to be collected from October 1 of each year to May 31 of the succeeding year for stockwatering and recreational purposes. Following assignment from others, this license was previously held by Transco Products, Inc., the

petitioner herein. The record of proceedings for this matter indicates that Mr. Sawyer is an officer of Transco Products, Inc.

(b) Licensed Application 16747 of Estate of Paul O. Weber authorizes storage of 48 acre-feet per annum in Jack Creek, about 2.1 miles downstream of petitioner's reservoir, to be collected from October 31 of each year to April 30 of the succeeding year for recreational purposes.

6. Petitioner erroneously claims that licensed Application 23351 authorizes storage in Jack Creek at the approximate location of the reservoir identified in Finding 5 (b) above. Actually, licensed Application 23351 authorizes storage in an unnamed stream which is tributary to Jack Creek about one mile further downstream (the point of diversion is within the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 13, T27S, R10E, MDB&M). Therefore, the reservoir under Application 23351 is not affected by flow from the other reservoirs identified herein.

Discussion

7. Finding 40 of Decision 1585 found that Paso Robles Creek, to which Jack Creek is tributary, can contribute toward the existence of a low flow "live stream" in the Salinas River; therefore, the season of availability of water for applications in the Paso Robles Creek watershed should fall within the period from January 1 to May 15 unless local conditions dictate otherwise.

8. Finding 44 of Decision 1585 describes alluvial conditions and notes the downstream reservoirs that would impede surface flow in Jack and Paso Robles Creek. Finding 44 then continues:

"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 [including 24733] should begin on January 1, as previously determined in paragraph 40." (Emphasis added.)

Finding 59 of Decision 1585 states in part:

"In order to provide the means for compliance with the restricted diversion seasons of the remaining 11 applications [including 24773], 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."

(Emphasis added.)

9. In reaching the above determinations, the specific circumstances involving all of the applications, including Application 24773, were considered.

10. When considering the authorization of appropriative water rights, the Board is compelled to protect known prior rights, regardless of whether the current holders of such rights formally protest. With respect to Application 24773, both of the previously identified downstream reservoirs enjoy prior rights. However, contrary to the petitioner's understanding, the right at the second downstream reservoir is senior to that at the first. Therefore, bypass of inflow both at the petitioner's reservoir and at the first downstream reservoir could be required in favor of the second downstream reservoir.

11. The purpose of the "live stream" requirement in the Salinas River is to protect those rights downstream of Salinas Dam that have priority over

the appropriative rights acquired in 1941 (permitted Applications 10211 and 10216) for diversion and storage at the dam. Certainly, the reservoirs on Jack Creek discussed above are subject to those pre-1914 rights along the Salinas River downstream of Paso Robles Creek. For example, the protest of the City of Paso Robles to Application 24773 claims such a prior right. Regardless of terms and conditions included in appropriations issued by this Board, the requirements of law could require that water be bypassed or released for use by downstream prior rights. This includes recharge of the underflow of Jack Creek, Paso Robles Creek, and the Salinas River so that later surface flows will establish a "live stream" in the Salinas River as soon as possible as found in Finding 44 of Decision 1585 (previously quoted herein). Therefore, waters reaching the point of diversion under Application 24773 could at some future time affect the existence of a "live stream" in the Salinas River by way of underflow recharge in the downstream alluvium.

This however, is not the sole reason for inclusion of the disputed term, as claimed by the petitioner. As previously indicated in Finding 10 herein, protection of local downstream prior rights was also considered. The fact that one of the local rights is currently held by an officer of the corporate applicant requesting this reconsideration is not relevant. That appropriation was previously held by other parties, and could be again.

12. The disputed term does not require that an outlet facility be provided within any specified time period. Rather, if the Board should determine that satisfaction of prior rights would best be served by an outlet facility, it could be required.

13. The season of diversion authorized for Application 24773 by Decision 1585 extends from January 1 to May 1 of each year. Certainly, rainfall will occur outside of these limits. Occasionally, runoff may also occur at the applicant's project outside of the authorized diversion

season. The disputed term would provide the means to satisfy downstream prior rights during such times, if necessary.

Conclusion

14. The Board concludes that inclusion of the disputed outlet facility term in the permit for Application 24773 is appropriate as ordered in Decision 1585.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition for reconsideration of Decision 1585 is denied.


Dated: November 18, 1982



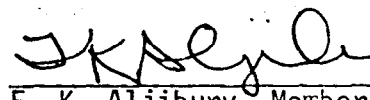
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