STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 20621 of DeLuz Heights Municipal Water District and Application 21471 of United States of America, Department of the Navy, to Appropriate from DeLuz Creek and Santa Margarita River, Respectively, in San Diego County

Decision D 1235

ADOPTED AUG 25 1965

DECISION APPROVING APPLICATION 21471 AND DENYING APPLICATION 20621

Substance of the Applications

Application 20621 was filed on February 19, 1962, by DeLuz Valley Mutual Water Company. A notice of assignment of this application to the DeLuz Heights Municipal Water District, hereinafter referred to as "DeLuz," was received on September 25, 1963.

The application is for the appropriation of 12,000 acre-feet per annum (afa) by storage to be collected between November 1 of each year and May 1 of the succeeding year from DeLuz Creek, a tributary of the Santa Margarita River. Water is to be used for domestic, irrigation, stockwatering, industrial, and recreational purposes. The point of diversion

is to be located within the NE¼ of SW¼ of Section 5, T9S, R4W.*

The place of use is to be a net irrigable area of 5,500 acres within a gross area of 17,611 acres within T8S and T9S, R4W and R5W. The boundaries of DeLuz do not include the entire gross area described in the application. However, all the lands within the boundaries of DeLuz are within the service area described in the application.

Application 21471 was filed by the United States of America, Department of the Navy, hereinafter referred to as "Navy," on September 23, 1963. The application is for the appropriation of 165,000 afa by storage to be collected year-round from the Santa Margarita River. Water is to be used for military, agricultural, domestic, municipal, and recreational purposes. The point of diversion is to be located within the NW¼ of NW¼ of Section 32, T9S, R4W, on the Santa Margarita River a short distance below the mouth of DeLuz Creek. The place of use is to be within 135,000 acres of land included within Camp Pendleton military reservation, a naval enclave in San Diego County, California, originally the Rancho Santa Margarita. In addition, water may be contracted to be supplied to public utility districts or municipal corporations in adjacent areas.

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* All references to township and range are from San Bernardino Base and Meridian.

The application also requests recognition of the series of surface impoundment and spreading works maintained and operated by the Navy on lands overlying the Santa Margarita River coastal basin. These works divert and capture surface flow of the river and cause the water to percolate into the basin from which it is pumped for military, domestic, municipal, and agricultural purposes, both within and without the watershed. The works are described as capable of recapturing in excess of 4,000 afa and will continue to be operated in like manner until completion of the surface storage reservoir.

Hearing

A hearing concerning these applications and Applications 20507 and 20608 was held in San Diego, California, on February 26, 27, and 28, and April 21 and 23, 1964. The hearing was conducted by Board Members Kent Silverthorne, Chairman, Ralph J. McGill and W. A. Alexander.

Applications 20507 and 20608 of Felix Garnsey and Richard Matthews to appropriate water from DeLuz Creek were approved by Decision D 1213 adopted by the State Water Rights Board on February 17, 1965.

Source

The Santa Margarita River is formed by the junction of Murrieta and Temecula Creeks about 2 miles southeast of the town of Temecula in Riverside County. Below this confluence the river flows in a general southwesterly direction about 30 miles to the Pacific Ocean about 4 miles northwest of the City of Oceanside (Staff Exh. 4). The river system drains an area of 742 square miles.

DeLuz Creek discharges into the Santa Margarita River about 12 miles upstream from the ocean. The creek, which is 13 miles long, drains an area of about 48 square miles (Staff Exh. 4).

Below the mouth of DeLuz Creek the Santa Margarita River enters a valley area having deep alluvium deposits. This valley or coastal area is divided into three ground water subareas designated Upper, Chappo, and Ysidora (Staff Exh. 3).

Water Supply

The watershed of the Santa Margarita River is semiarid. Rainfall occurs generally between October and April. Most of the precipitation occurs during February, March, and April. There is little or no

surface flow in most streams within the watershed until there is storm runoff. Once the rain has ceased, the surface flow again reduces to a small base flow or stops (RT* 278-279).

Discharge of the Santa Margarita River to the Pacific Ocean is measured by a USGS gage near Ysidora located approximately 2.5 miles from the ocean. Water which passes this point may be considered unappropriated. The record of this station for the water years 1922-23 through 1962-63 shows that the annual flow has varied between a minimum of zero and a maximum of 122,045 acre-feet. Although the average annual flow for this period is 20,728 acre-feet, the median is only 5,830 acre-feet. There are several years of extremely heavy runoff, but there are many more years of low runoff (U. S. Exh. 4). Large cyclic storage facilities are required to conserve this water for beneficial use.

Discharge of DeLuz Creek is measured by a USGS gage located approximately 0.5 mile above its mouth. The record of this gage for the water years 1951-52 through 1962-63 shows that the annual flow has varied between a minimum of zero and a maximum of 20,809 acre-feet. Although the average annual flow for this period is 4,239 acre-feet,

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* RT refers to the reporter's transcript of the hearing.

the median is only 583 acre-feet. In fact, in only three of the ten years of record did the annual flow exceed the average (U. S. Exh. 4).

DeLuz Project

DeLuz proposes to construct an earth dam on DeLuz Creek about 5 miles upstream from its mouth. The dam would be 120 feet high to the crest of the spillway, have a freeboard of about 20 feet, and would be approximately 1,200 feet long. The reservoir created by the dam would have a maximum surface area of 375 acres and a maximum capacity of 14,000 acre-feet (RT 62-63).

Because the proposed reservoir would be at a lower elevation than most of the place of use, water would be pumped to the higher lands through a pipeline. DeLuz proposes at this time to construct only a single pipeline from the reservoir to a maximum elevation of 1,100 feet above sea level at a point near the center of Section 34, T8S, R4W. Water would be lifted a maximum of 750 feet. Local improvement districts would be formed to finance and construct the rest of the distribution system. No engineering investigations have been made and no cost estimates have been prepared for the distribution system beyond the single pipeline mentioned above (RT 86-89).

DeLuz covers a sparsely settled, mountainous area in San Diego County, north and west of the town of Fallbrook, most of which is drained by DeLuz Creek and its tributaries. It is characterized by rugged terrain, incised by many deep, narrow canyons. Elevations range from about 300 feet to about 2,500 feet above sea level (Staff Exh. 4).

There are about 10,460 acres in the district, of which about 2,000 acres are government lands (RT 331). Approximately 2,200 acres are outside the watershed of DeLuz Creek (RT 349). Only 1,596 acres are classified as irrigable. Most of these are adjacent to the various stream channels (U. S. Exh. 12).

The assessed value of all privately owned lands in the district is $135,970 in 78 ownerships (U. S. Exh. 10).

Major use of water in the district would be for domestic purposes at homes which would be built if water were available (RT 68-69, 158, 166). There are now about 50 families residing in the district, of which 8 or 10 have moved in during the past year (RT 130).

Estimates of cost for developing a water supply by means of the proposed reservoir on DeLuz Creek were preliminary and require further study. Engineering information concerning the quantity of water that the project

would yield and the expense of distributing the water throughout the service area is lacking.

The district's consulting engineer testified that the capital cost of the reservoir and appurtenant structures would be about $1,500,000, that the capital cost per acre-foot of safe yield (3,000 afa) would be $500, and the cost to the consumer would be $38.35 per acre-foot. These figures cover only the cost of the reservoir and the single pipeline that has been planned. They do not include the cost of distributing the water to potential users (RT 102, 447-448, 468). They are derived from a reconnaissance type of study rather than from actual surveys (RT 66, 84, 105). An annual interest rate of only 3½ per cent on bonded indebtedness was assumed (RT 103).

No estimate has been made of the cost of a distribution system (RT 89). The consulting engineer's opinion that the firm annual yield of the reservoir would be 3,000 acre-feet was based on water supply figures which included water contributed by the Santa Margarita River between the Fallbrook gage and the Navy's damsite, which would not be available to the district (RT 426, 525-526). Omitting this water, a study by the Board's staff indicates that not more than 2,725 afa could be developed and then only by drawing the reservoir empty. This would increase the cost of water to the consumer to $43 per acre-foot, based on a realistic

annual interest rate of 4 per cent, a 40-year repayment period, and the same pumping cost estimated by the district. Again, cost of distribution facilities is not included.

The studies by the district's consulting engineer assumed that the entire stream runoff at the damsite would be impounded to the capacity of the reservoir without allowing for any releases of water for satisfaction of downstream prior rights (RT 237). If DeLuz were unable to impound all of the water available for storage at its reservoir, the yield of its project would be diminished and this, in turn, would increase the unit cost of water to landowners within the district (RT 476).

Whether the reservoir could be operated in the manner contemplated cannot be determined with certainty at this time. Much depends upon a final definition of the existing rights of the United States which must await the outcome of the appeal from the judgment of the trial court in U. S. v. Fallbrook Public Utility District et al. Even assuming that DeLuz Creek water is not needed to satisfy the legitimate claims of the Navy under existing conditions, some of it may be required for this purpose if and when the Fallbrook Public Utility District (hereinafter referred to as Fallbrook) constructs its proposed project on the Santa Margarita River and prevents most of the flow of that stream from reaching Camp Pendleton.

DeLuz has no projections of future population or irrigated acreage (RT 454). Testimony by residents of the district indicates that the present water supply from wells is meager and probably limits development. Although these witnesses expressed their willingness to purchase water at a "reasonable" price (RT 131, 149), they have not been told what it would cost (RT 166), and no reliable evidence of cost was presented. The irrigable area is not concentrated but is located along many streams tributary to DeLuz Creek and the Santa Margarita River (U. S. Exh. 11). Therefore, unless there is a sizable population increase, the cost of a distribution system to serve these widely separated irrigable areas may be in excess of the land's repayment capability.

DeLuz has maintained that its future water requirements are far in excess of 3,000 afa. Therefore, even if it constructed its proposed reservoir, an additional supply, possibly 5,000 afa, would be required (RT 240). This supply will probably come from the Colorado River and will be furnished through the San Diego County Water Authority (RT 472). The water would be discharged into Temecula Creek from the main Colorado aqueduct. It would flow down the channel of Temecula Creek and the Santa Margarita River to a point a short distance below the Fallbrook damsite from whence it would be rediverted for use within DeLuz (RT 98-99). Water

might also be secured from the State's Feather River Project, in which case it would be delivered in the same way (RT 100).

The Navy Project

The plan for development proposed by the Navy contemplates the construction of an earth-filled dam across the Santa Margarita River about one-half mile below the mouth of DeLuz Creek. This dam would be approximately 210 feet high and have a crest length of about 3,000 feet. The reservoir created by this dam would have a maximum surface area of approximately 2,100 acres and a capacity of 165,000 acre-feet (U. S. Exh. 6).

This reservoir would be operated in conjunction with the coastal ground water basin located along the Santa Margarita River immediately below the dam. The additional yield of water developed by this reservoir would be used to firm the water supply available to Camp Pendleton, the Naval Hospital, the Naval Ammunition Depot, and agricultural lands leased to private operators. A portion of the yield would be used to provide a hydraulic barrier against salinity intrusion from the Pacific Ocean. This would permit sewage effluent, which is presently used for this purpose, to be discharged outside the coastal basin and prevent further degradation of water quality within the ground water basin. A portion of the yield would be made

available to the Fallbrook Public Utility District in lieu of Fallbrook's constructing a dam, for which it has permits from the Board, at a point about 8 miles upstream from the Navy's site. If additional yield is available, it may be supplied to municipalities or other districts within the area, or it could be used for irrigation purposes on the coastal mesa (RT 507-17 and U. S. Exh. 6).

In addition, the dam would provide flood protection for the downstream developments in Camp Pendleton as well as the main line of the Santa Fe Railroad and Highway US 101. The reservoir also would provide a recreational facility for camp personnel and other local residents and could be utilized for training purposes for personnel attached to Camp Pendleton. When water is imported to Southern California through the California Aqueduct System, additional storage space available in this reservoir could provide for terminal storage for communities such as Fallbrook, Oceanside, Vista, and Carlsbad (U. S. Exh. 6, RT 357) and facilitate exchanges and better use of imported supplies.

During the past few years the average population of the naval enclave has been about 35,000 (RT 325). The Navy's present water requirement is about 10,000 afa. This includes 3,000 afa for water quality improvement and about 1,700 afa presently being diverted to the coastal plain for

irrigation purposes (RT 509-510). The 3,000 afa for water quality improvement is a maximum and probably would be reduced after water quality within the coastal basin is upgraded (RT 510-511). The sewage effluent could not be used for all crops presently grown on the coastal mesa, but it could be used on some crops and allow an additional area to be irrigated.

In the event of a national emergency, another Marine division would be added, and the water requirement would substantially increase (RT 325). The trial court in U. S. v. Fallbrook determined that 23,740 afa would be required to satisfy the needs of the 106,000 persons who would be on the enclave in the event of war and full mobilization (DeLuz Exh. 5).

The Navy estimates that its project would yield 15,350 afa, which includes 6,000 afa now being used from the coastal ground water basin (RT 300, 504-506). The total cost of the project is estimated to approximate $10,300,000 (U. S. Exh. 6, RT 299).

Only limited information was presented concerning economic justification and financial feasibility of the Navy's project. Because of the elements of military training, emergency military water requirements, and flood protection of Camp Pendleton facilities, economic justification and financial feasibility are difficult to evaluate in monetary

terms. The project can be constructed and paid for if Congress chooses.

The Navy's project is dependent not only upon congressional authorization, but also upon an agreement with Fallbrook whereby the district would share in the surplus water conserved by the Navy's dam instead of building its own dam (RT 506). Construction of the Fallbrook dam and operation of its reservoir so as to achieve the maximum yield in the manner testified to by a representative of the district, would seriously deplete the supply available to the Navy (RT 564-565). Fallbrook has received permits to appropriate water and, according to its general manager and chief engineer, intends to build its own dam (RT 478-485).

Negotiations between the Navy and Fallbrook, while not presently active, are still open. One of the conditions that has been imposed by Fallbrook is that the Navy secure a permit from the State (RT 506). Fallbrook has joined in a request submitted to the Board by the Navy that the Board defer issuance of further permits which would affect the availability of water at the Navy's dam (Staff Exh. 1), thus indicating a continuing interest in the construction of this facility.

The California Water Plan

Water Code Section 1256 requires the Board, in determining public interest under Sections 1253 and 1255, to "give consideration to any general or co-ordinated plan looking toward the control, protection, development, utilization, and conservation of the water resources of the State, including The California Water Plan, prepared and published by the Department of Water Resources or any predecessor thereof and any modification thereto as may be adopted by the department or as may be adopted by the Legislature by concurrent resolution or by law."

The California Water Plan consists of Bulletins 1 and 2 of the former State Water Resources Board and Bulletin 3 of the Department of Water Resources "with such amendments, supplements and additions as may be later necessary" (Water Code Section 10,004).

The California Water Plan includes construction of a reservoir of 143,000 acre-foot capacity on the Santa Margarita River at the site proposed by the Navy, together with a 65,000 acre-foot reservoir at the Fallbrook site. A possible alternative is a 188,000 acre-foot reservoir at the Navy site with no development at the Fallbrook site (Bulletin 3, page 89). No provision was made in The California Water Plan for a reservoir on DeLuz Creek.

The State undertook an investigation of the Santa Margarita River which is reported in Bulletin 57, June 1956 (Staff Exh. 3). A 50,000 acre-foot reservoir on DeLuz Creek about 2 miles above its confluence with the Santa Margarita River was considered as a possible alternative for a reservoir of similar size at the Navy site. Because both capital cost and cost per acre-foot of water conserved were found to be higher, this possibility was eliminated from further consideration (Staff Exh. 3, pp. 235-245).

Comparison of Projects

For the purpose of comparing the two projects, it is assumed that each may be constructed without upstream impairments, each may be financed, and each will pay the reimbursable costs.

The evidence is clear and uncontradicted that a dam on the lower reaches of the Santa Margarita River below DeLuz Creek as proposed by the Navy, would conserve more water than a dam at any other location. Except during the wettest years, such a dam would control the entire runoff of the river and eliminate waste of water to the ocean (U. S. Exh. 15). No other dam or feasible combination of dams could do as much in this respect.

There are other factors which also favor the Navy project. The reservoir would be operated in conjunction

with the ground water basin (RT 582). Such a conjunctive operation would more fully develop the available water supply (RT 583). An analysis of the evidence indicates that an annual yield of 18,000 acre-feet or more might be produced.

Conjunctive operation would also eliminate the necessity of returning sewage effluent to the ground water basin and thereby stop further degradation of water quality. In fact, it would result in an improvement of water quality. The sewage effluent could be made available for irrigation on the coastal mesa. This would provide an additional 2,300 afa.

In addition to impounding flood flows and making them available for later consumptive use, either directly from the reservoir or by recapture from ground water, the Navy project would provide flood protection, afford opportunity for recreation and military training on the surface of the reservoir, and serve as a possible place for terminal storage of water imported into the area.

The benefits of the proposed dam and reservoir on DeLuz Creek would necessarily be limited by the size of the watershed and consequent runoff, which are small compared with the entire Santa Margarita watershed and runoff. Flood control and recreation benefits would be minor if the reservoir were operated as planned to produce maximum

annual safe yield for domestic and irrigation use.

There is no doubt that if either, but not both, of these reservoirs can be economically constructed, the larger of the two and the one producing the greater overall benefits should be selected in keeping with the policy that the water resources of the State be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented (Calif.Const. Art. 14, Sec. 3).

The evidence indicates that construction of the DeLuz project would seriously impair the Navy project and would probably render it infeasible by intercepting most of the flow of DeLuz Creek which would otherwise reach the Santa Margarita River above the Navy reservoir (U. S. Exh. 4, RT 337-339, 522, 564). Furthermore, it would not be economic to build both dams when one could conserve all the water and produce all the benefits that could be attributed to both.

The only reason that might justify construction of the DeLuz project in view of the foregoing circumstances would be to satisfy a need for water in the DeLuz potential service area that could not otherwise be met. However, the yield of this project would at most supply a minor part of the total future demand of 8,000 afa envisioned by the district (RT 240). DeLuz expects to secure whatever additional water is needed by purchase from an outside source.

Water from the Navy project could physically be supplied to DeLuz (RT 69-70). The Navy's maximum need for water (neglecting a national emergency) equals only 10,000 afa. The minimum quantity of water to be developed by the Navy over and above this amount would be 5,000 afa and might approach 11,000 afa. However, not all of this surplus would be available for use by DeLuz, because to make the Navy's project feasible, an agreement must be negotiated to supply water to Fallbrook Public Utility District in lieu of water which that district could develop by its own project. The reservoir authorized by Fallbrook's permits would develop a maximum average yield of about 6,000 afa (Staff 1). If, however, the reservoir were operated for a safe annual yield, it would produce only 3,000 afa (Staff 1). Therefore, a negotiated settlement with Fallbrook probably would require delivery of between 3,000 and 6,000 afa.

On the basis of the information available from the record, the quantity of water in excess of the needs of the Navy and Fallbrook may reasonably be expected to equal or exceed 2,725 afa, the maximum yield of the reservoir proposed by DeLuz. According to the testimony presented by the Navy, this additional quantity of water will be made available to other districts or municipalities in the area (RT 344). Because DeLuz has expressed a desire to develop a water supply and because it is within the watershed of the

Santa Margarita River, the district should be given an opportunity to contract for this additional water, although the Board is of the opinion that before DeLuz makes any commitment for a water supply, a complete analysis and feasibility study should be made of the several alternatives that may be available.

Discussion of Various Issues

DeLuz argues at considerable length in its briefs that the valid water rights of the Navy are restricted to riparian uses within the watershed of the Santa Margarita River, which at most have averaged 1,752 afa, that no increase in this use is anticipated, that the United States has acquired no appropriative or prescriptive water rights and it does not have a right recognizable under State law to operate its existing spreading works. DeLuz then attempts to demonstrate that even if both its dam and Fallbrook's were constructed, ample water would be available to satisfy the "legitimate needs" of the Navy, that therefore there is unappropriated water available to DeLuz, and that its application should be approved.

The Board is not called upon to determine the validity of the Navy's existing uses of water. This is a matter for the federal courts. The greater the doubt concerning their validity, the more the reason for the

Navy to seek issuance of a permit in order to protect its existing uses against future appropriations by others upstream from and outside of the naval enclave.

The real question before the Board in this respect is not whether the Navy has been lawfully using the water, either within or without the watershed, or whether its method of diversion has been a proper exercise of a riparian or other right, but whether these uses are beneficial, in the public interest, and should continue.

There can be but one answer. Certainly, few things are more important to the national welfare than assurance that the training facilities and other military installations within the naval enclave will endure. For this purpose, water is essential. Commitment of the unappropriated water resources of the Santa Margarita River to military and allied uses by the Navy to the extent necessary for those purposes, is one of the highest and best uses to which the water could be devoted, resembling both a domestic and municipal type of use which are accorded first preference under California law. Of course, property rights of others must not be infringed, and the courts will see that they are not. In any event, no action that the Board can take could affect existing water rights because permits issued by the Board apply only to unappropriated water and are expressly subject to vested

rights.

DeLuz has suggested that because the Navy exercises exclusive jurisdiction within the enclave, its application should be considered as though it proposed use in another state over which California has no jurisdiction and should therefore, as a matter of policy, be denied or at least subordinated to applications by others for uses which are subject to control by California. This argument, if accepted, would deny the Navy the right to apply for and receive a permit under State law for the use of any of the State's water on an equal footing with other applicants. If valid, it would seem to justify the past failure of the Navy to comply with State laws governing acquisition of water rights by seeking a permit, for failure would have been a foregone conclusion. The attempted analogy between an application for use of water in the enclave and in another state has a number of imperfections. Most obvious, perhaps, is the fact that California is not a part of a neighboring state but is a part of the United States.

Applications by federal agencies which claim exclusive jurisdiction to regulate and control their diversions and uses of water because of alleged paramount sovereignty are no strangers to the Board. The Board's practice has been to accept and act upon them in accordance with the same rules which govern its acceptance and action upon applications by others. The benefits of state-recognized water rights must

include the necessary conditions and limitations.

The Navy has expressed its desire for "a permit or appropriate order" without the conditions which the Board might feel impelled to impose on a permit issued to one other than the United States, and that instead the Board "simply provide for such use of water to be appropriated and for such operation and disposition of the project as may be authorized by Congress" (RT 263-264).

However, State law which is binding on the Board requires that all permits contain certain conditions, including:

1. All of the provisions of Article 3 (commencing with Section 1390), Chapter 6, Part 2, Division 2, of the Water Code (Water Code Section 1391).

2. The time within which construction work shall commence and be completed and the water shall be applied to beneficial use (Water Code Sections 1395-1398).

3. Such terms and conditions as in the judgment of the Board shall best develop, conserve, and utilize in the public interest the water sought to be appropriated (Water Code Section 1253).

Congress will decide the conditions under which

federal funds will be expended. If the water rights granted to the Navy by the State do not meet with congressional approval, that body may exercise its choice of rejecting them and either authorizing construction of the project as though no water rights had been granted or refusing authorization unless acceptable rights are granted.

DeLuz takes exception to the form in which Application 21471 was prepared and filed with the Board, contending that it is deficient in a number of respects. The Board has examined the application and finds that it substantially complies with all legal requirements to the Board's satisfaction and that such minor variations in form as exist could not possibly prejudice any other person.

DeLuz points to the fact that the water which would be developed by the Navy's dam far exceeds the Navy's present and anticipated future requirements. This is true, but is no reason the dam should not be built and the surplus water conserved for use by others.

DeLuz accuses the Navy and its representatives of what it calls lack of good faith and failure to exercise due diligence. The record does not support these charges. DeLuz contends that the Navy has failed to demonstrate an intent to construct the project because Congress has not authorized it. Intent by the executive department of the United States which applies for a permit to recommend to

Congress that the project be authorized, is sufficient in this respect to justify approval of an application.

The fact that construction of the Navy's project is dependent upon certain contingencies is not in itself cause for denying its application. Most projects that are to be owned and financed by a governmental agency are similarly dependent upon the occurrence of various events, the outcome of which cannot be predicted in advance.

It is true that Fallbrook has secured permits for its project and that its general manager testified that the district intends to proceed with construction of its dam. However, there is also evidence that negotiations between Fallbrook and the Navy will be reactivated if a permit is issued to the Navy (RT 506). The fact that Fallbrook joined in a request to the Board by the Navy that the water supply presently available for conservation by the Navy be protected against future upstream diversion by others, strongly indicates that Fallbrook is still considering the possibility that the Navy's dam will be constructed and that Fallbrook will share in the benefits.

A reasonable time should be allowed to the Navy in which to secure congressional authorization and conclude an agreement with Fallbrook Public Utility District for a water supply from the project. In the event it should become evident that Congress will not authorize this project

reasonably soon or that Fallbrook will not agree to an arrangement which will allow the Navy to go ahead with the project, the permit issued to the Navy should be terminated so that the water supply may be made available for development by others.

Conclusion

The Board finds that the project described in Application 21471 of the Navy, if constructed and operated subject to the limitations and conditions of the following order, would best develop, conserve, and utilize in the public interest the water sought to be appropriated; that the project would be consistent with The California Water Plan; that unappropriated water is available to supply the Navy, but whether in sufficient quantity to make the proposed project feasible depends upon whether Fallbrook Public Utility District constructs a dam and reservoir pursuant to its permits; that the proposed uses are beneficial; and that the application of the Navy should be approved and permit issued in conformity with the following order.

The Board further finds that unappropriated water is available in DeLuz Creek, but whether in sufficient quantity to justify the project proposed by DeLuz is not determined and need not be in view of the other findings; that the economic and financial feasibility of the DeLuz project have not been established, is doubtful, and requires further study;

that construction and operation of the dam and reservoir proposed by DeLuz would substantially deplete the water supply that would otherwise be available to the Navy and would probably make the Navy's project infeasible; that DeLuz will be able to obtain an adequate water supply for its future requirements either by purchase from the Navy or through the San Diego County Water Authority; that the appropriation proposed by DeLuz would not best conserve the public interest and its application should be denied.

ORDER

IT IS HEREBY ORDERED that Application 21471 be, and it is, approved, and that a permit be issued to the applicant subject to vested rights and to the following limitations and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed (a) 165,000 acre-feet per annum (afa) by surface storage to be collected year-round, and

(b) 4,000 afa by underground storage by means of the existing system of surface impoundment and spreading works on lands overlying the Santa Margarita River coastal basin.

2. The maximum quantity herein stated may be reduced in the license if investigation warrants.

3. Actual construction work shall begin on or before December 1, 1968, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Construction work shall be completed on or before December 1, 1970.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1973.

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

7. Permittee shall allow representatives of the State Water Rights Board reasonable access consistent with national security to project works to determine compliance with the terms of this permit.

8. In accordance with the requirements of Water Code Section 1393, permittee shall clear the site of the proposed reservoir of all structures, trees and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

IT IS FURTHER ORDERED that Application 20621 be, and it is hereby, denied without prejudice to the right of DeLuz Heights Municipal Water District to file a new application in the event Application 21471 should be canceled.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on the 25th day of August, 1965.

/s/ Kent Silverthorne
Kent Silverthorne, Chairman

/s/ Ralph J. McGill
Ralph J. McGill, Member

/s/ W. A. Alexander
W. A. Alexander, Member