

INTERNATIONAL JOINT COMMISSION

IN THE MATTER OF THE APPLICATION OF THE STATE OF  
WASHINGTON FOR APPROVAL TO CONSTRUCT A CONTROL  
STRUCTURE NEAR THE OUTLET OF OSOYOOS LAKE

SUPPLEMENTARY ORDER OF APPROVAL

(October 17, 1985)

WHEREAS the Commission issued an Order of Approval on December 9, 1982 which, subject to certain conditions, approved the construction, maintenance and operation by the State of Washington, hereinafter referred to as the Applicant, of a control structure and related works on the Okanogan River downstream from the outlet of Osoyoos Lake to replace Zosel Dam;

WHEREAS the Applicant, by a letter from Governor Gardner dated August 21, 1985, has amended its application to change the location and design of the control works; to provide for adequate flow capacity in the channel of the Okanogan River without necessarily relocating Tonasket Creek; and to extend the time for completion of the control structure and appurtenant works;

WHEREAS the Commission's International Osoyoos Lake Board of Control, appointed under Condition 3 of the Commission's Order of Approval of September 12, 1946, advised the Commission in a letter dated September 12, 1985 that, based on a review of the preliminary design documents, these changes will satisfy the conditions contained in the Commission's 1982 Order of Approval subject to certain comments and actions set out in the Board of Control's letter;

WHEREAS a spokesman for the Province of British Columbia has expressed the Province's support for the Applicant's amended application;

WHEREAS the Commission's Order of Approval of December 9, 1982 provides that the Commission retains jurisdiction over the subject matter of that Order and after giving such notice and opportunity to all interested parties to make representations as the Commission deems appropriate may make further order or orders relating thereto as may be necessary in the judgment of the Commission;

WHEREAS pursuant to published notices, public hearings were held at Oroville, Washington on the morning of September 19, 1985 and at Osoyoos, British Columbia on the afternoon of the same day at which all interested persons were afforded the opportunity of being heard by the Commission;

WHEREAS the Commission's International Osoyoos Lake Board of Control, appointed under Condition 3 of the Commission's Order of Approval of September 12, 1946, informed the Commission at the public hearings that no further structural improvements are required to Zosel Dam if the new control structure and appurtenant works are completed by the middle of 1987;

WHEREAS Chief Clarence Louie of the Osoyoos Indian Band by letters dated September 19 and September 25, 1985 requested the Commission to provide for compensation for loss of land as a result of Zosel Dam; requested the Commission to investigate damages caused by Zosel Dam as well as damage which could be caused by the works which have been proposed by the Applicant to replace Zosel Dam; and requested the Commission to determine liability for any such damages;

WHEREAS the Commission held public hearings in 1943 and 1946 prior to issuing an Order of Approval for Zosel Dam and the Indian Agent interested in Osoyoos Indian Reserve No. 1 stated at the public hearings held in Penticton, British Columbia on July 10, 1943 that Indian Reservation lands had been flooded;

WHEREAS the Indian Agent interested in Osoyoos Indian Reserve No. 1 stated at the public hearings held in Osoyoos, British Columbia on June 21, 1946 that a level for Osoyoos Lake between 911.1 and 911.6 "would be quite satisfactory to us", and that others with property on Osoyoos Lake also said that they would have no objections to such levels;

WHEREAS the Commission's 1946 Order of Approval contained requirements for Zosel Dam which took into account the wishes of Osoyoos Indian Reserve No. 1 and of other persons with lakefront property concerning the effects of the dam on the level of Osoyoos Lake, as stated at the public hearings;

WHEREAS the Commission held public hearings in 1978 to receive comments concerning the possible improvement of water levels on Osoyoos Lake, and the Okanagan River above Zosel Dam, and about the possible structural improvement or replacement of Zosel Dam, and, at those hearings, Chief Baptiste of the Osoyoos Indian Band requested compensation for land lost as a result of Zosel Dam;

WHEREAS Chief Baptiste attended public hearings held by the Commission prior to issuing its 1982 Order of Approval for a new control structure and appurtenant works to replace Zosel Dam, and did not at that time express concern regarding the flooding of lands belonging to the Osoyoos Indian Band but asked whether the new works would be capable of releasing enough water to keep the level of Osoyoos Lake from rising above 913 feet even during flood conditions;

WHEREAS the Commission's 1982 Order of Approval, retained essentially the regime for the level of Osoyoos Lake established in the Commission's 1946 Order of Approval;

WHEREAS the Commission's present Supplementary Order of Approval does not change the requirements for the new works which relate to the level of Osoyoos Lake and which were established in the Commission's 1982 Order of Approval;

WHEREAS the Commission has decided that it will not accede to Chief Louie's request that it investigate this matter further and provide for compensation for loss of land caused by Zosel Dam; and

WHEREAS, as stated in the Commission's Order of Approval of December 9, 1982, there continues to be an urgent need to replace Zosel Dam, the replacement works proposed by the Applicant would facilitate control of the water levels of Osoyoos Lake for the benefit of agriculture, tourism and other interests; and the replacement works would not create flood levels any more extreme than would have occurred if Zosel Dam had remained in place and been maintained and operated in accordance with the 1946 Order of Approval.

NOW, THEREFORE, it is ordered that the Commission's Order of Approval of December 9, 1982 is hereby amended as follows:

1. Condition 1 is deleted and the following substituted therefor:

"1. The control structure shall be located on the Okanogan River between the Cherry Street Bridge in Oroville, Washington and the present site of Zosel Dam."

2. Condition 2 is deleted and the following substituted therefor:

"2. The principal works shall include a reinforced concrete control structure with appropriate power operated control gates, an overflow weir section, stop logs, piers having adequate capability for breaking ice, a stilling basin, fish passage facilities, appropriate seepage and erosion controls, and measures required pursuant to Condition 4."

Condition 4 is deleted and the following substituted therefor:

"4. The Applicant shall take all measures necessary to ensure that the flow capacity of the Okanogan River, upstream and downstream from the control structure, enables the control structure to pass at least 2500 cubic feet per second when the elevation of Osoyoos Lake is 913.0 feet USCGS and there is no appreciable backwater effect from the Similkameen River."

4. Condition 5 is deleted and the following substituted therefor:

"Before commencing construction of the said works, the Applicant shall obtain written confirmation from the Board of Control, appointed under Condition 14, that the final design for the works appears capable of satisfying the Conditions contained in this Order of Approval."

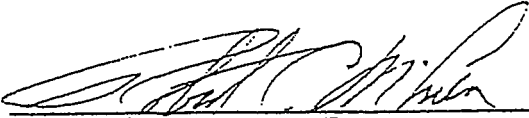
This approval will terminate:

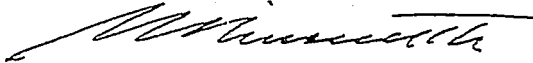
(a) ninety (90) days after the date of signing of this Supplementary Order, unless within that time the Applicant informs the Commission in writing that it accepts all of the conditions set forth in the Commission's Order of Approval of December 9, 1982 as amended by this Supplementary Order;

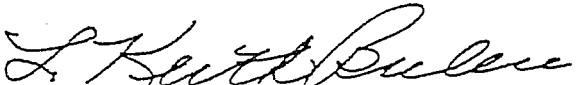
(b) on July 31, 1987, unless before that date, the control structure and appurtenant works are essentially complete and operational according to the provisions of this Order;

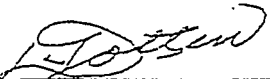
(c) twenty-five (25) years after the Board of Control has informed the Commission that construction has been completed, unless renewed.

Signed this 17th day of October, 1985.

  
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Robert C. McEwen

  
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P.-André Bissonnette

  
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L. Keith Bulen

  
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Donald L. Totten