

DRAFT**SUBJECT TO REVISION**

APPROVED
DATE <u>8/15</u>
APPL. _____
TECH. SVC. _____

PERMIT TO
APPROPRIATE STATE WATER

APPLICATION NO. 4492

PERMIT NO.

TYPE: \$11.121

Permittee: HYDRACO POWER, INC.

Address: Route 2, Box 303
San Marcos, Texas 78666

Filed: September 25, 1984

Granted:

Counties: Caldwell and Guadalupe

Watercourse: San Marcos River,
tributary of
Guadalupe River

Watershed: Guadalupe River Basin

WHEREAS, the Texas Water Commission finds that jurisdiction of the application is established; and

WHEREAS, a public hearing has been held and an order has been entered by the Commission;

NOW, THEREFORE, this permit to appropriate and use State water is issued to Hydraco Power, Inc., subject to the following terms and conditions:

1. IMPOUNDMENT

Permittee is authorized to maintain an existing concrete overflow dam and reservoir on the San Marcos River and impound therein not to exceed 30 acre-feet of water. The east end of the dam is S 72° W, 2900 feet from the southernmost corner of the William Pettus Survey, Abstract No. 21, approximately 11 miles west-southwest of Lockhart, Caldwell County; the west end of the dam is in the B & G Fulcher Grant, Abstract No. 21, Guadalupe County, and the east end of the dam is in the aforesaid Pettus survey, Caldwell County. The effective crest of the dam is at elevation 501.4 feet above mean sea level.

2. USE

Permittee is authorized to generate hydroelectric power by making nonconsumptive use, at a rate not to exceed 122 cfs, of water passed through, spilled from, or released from storage in the above said reservoir.

3. DIVERSION

(a) Point of Diversion: Through one turbine in a powerhouse at the aforesaid point on the east end of the dam.

(b) Maximum Diversion Rate: 122 cfs (54,757 gpm).

TEXAS DEPARTMENT OF WATER RESOURCES

TEXAS WATER COMMISSION



AN ORDER Granting Application No. 4492 of
Hydraco Power, Inc.

On the day of , 1985, the Texas Water Commission considered the application of Hydraco Power, Inc., Route 2, Box 303, San Marcos, Texas 78666 for a permit under Section 11.121 of the Texas Water Code to divert 88,308.17 acre-feet of water per year from an existing reservoir on the San Marcos River, tributary of the Guadalupe River, Guadalupe River Basin, for hydroelectric power generation. The application was presented to the Commission with a Proposal for Decision by Joseph W. O'Neal, a Hearings Examiner of the Texas Water Commission who took the matter under advisement following a public hearing on November 15, 16 and 29 and December 3, 1984.

The following were admitted at the hearing as parties to the proceeding: the applicant, Hydraco Power, Inc.; the Executive Director and Public Interest Advocate of the Texas Department of Water Resources; Bonnie and Tom McCarroll; Jim and Dea Wilson; Carol Waggoner Thompson; Joan and Clinton Spragins; John Jordan; Foster and Marilyn Jordan; Jack and Marie Fairchild; Tom Goynes; Dwyer-Sanders Company; Texas River Recreation Association; and Texas Parks and Wildlife Department.

The Hearings Examiner prepared a Proposal for Decision and drafted a proposed Order which were considered by the Texas Water Commission on May 6, 1985. The Texas Water Commission remanded the application for further hearing. A conference was held on May 23, 1985 in Austin, Texas and the remand hearing was held on June 10, 1985, also in Austin.

After considering the Examiner's Proposal for Decision and the pleadings and evidence submitted relative to this

matter and after assessing the effects of issuance of the permit on the bays and estuaries of Texas, the Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Texas Water Commission accepted Application No. 4492 for filing on September 25, 1984, after determining that the application was in proper form and accompanied by all necessary fees.

2. On October 19, 1984, notice of the application and hearing was transmitted by first-class mail to all claimants and appropriators of record with the Department in the Guadalupe River Basin and all navigation districts within said basin.

3. Timely notice of the application and hearing was published on October 18 and 25, 1984 in the San Marcos News, a newspaper of general circulation in Hays, Caldwell, and Guadalupe Counties, Texas.

4. Applicant seeks authorization to maintain an existing dam (Martindale Dam) and reservoir on the San Marcos River, Guadalupe River Basin, to impound therein a total of approximately 60 acre-feet of water and to divert 88,308.17 acre-feet of water per year at a diversion rate not to exceed 122 cfs for hydroelectric power generation.

5. Martindale Dam was constructed in 1883.

6. Texas Power and Light Company utilized Martindale Dam and reservoir for hydroelectric power generation from about 1925 until about 1940.

7. The applicant, Hydraco Power, Inc., executed a contract on March 26, 1983 with Martindale Water Supply Corporation for the purchase of Martindale Dam.

8. Martindale Water Supply Corporation executed a quitclaim deed on February 6, 1984 to Hydraco Power, Inc. for Martindale Dam.

9. Martindale Dam is a concrete rock-filled structure, with the area holding back water being 103 feet long, and with

the height of the dam being 10 to 10-1/2 feet from the tailwater level below the dam to the top of the concrete crest.

10. The applicant refurbished the hydroelectric power plant utilizing the existing turbine and adding, replacing and rebuilding components of the system as necessary, including a new 150 kw-per-hour generator. The system has been connected into the Bluebonnet Electric Cooperative system.

11. On August 9, 1984, the Texas Water Commission issued a one-year temporary permit (No. TP-4984) to Hydraco Power, Inc. authorizing the permittee to divert and use part of the flow of the San Marcos River at Martindale Dam (estimated to be 88,000 acre-feet of water per annum) for hydroelectric generating purposes.

12. The design of the turbine is for 12 feet of head at a design flow of 122 cubic feet per second. With the water level at the top of the concrete crest of the dam, the head on the turbine is 10 to 10-1/2 feet.

13. The applicant began testing the hydroelectric power generating system in late September and October, 1984. The applicant installed flashboards on the top of the dam to a height of about 18 to 20 inches, which caused the level of the reservoir to increase. Also during testing, the lowest the water level dropped was 14 inches below the top of the concrete crest.

14. Several protestants who live around the reservoir, upstream of Martindale Dam, appeared at the hearing complaining that the fluctuation of the water level interfered with the use of their boat docks, water intake lines, and inundated land along the reservoir.

15. The applicant has not met the requirements of Section 303.30 of the Texas Department of Water Resources Permanent Rules concerning easements, consents or other agreement from all persons owning land inundated by the reservoir.

16. A permit authorizing impoundment of water limited to the level caused by the existing concrete crest of the dam (501.4 above msl) is in the public interest, considering that the dam and reservoir have been in existence since 1883.

17. The existing concrete structure of Martindale Dam is sound. The structure is of low-hazard potential, i.e., in the event of failure, no loss of life or severe economic losses are expected to occur in the downstream area.

18. Water is available for the applicant's proposed use. Also, sufficient water is available to allow for consumption caused by evaporation from the reservoir, and there will be no significant impact on downstream water right holders from evaporation of the reservoir.

19. A convenient place is in existence for portage of canoes past the dam, and the applicant has shown an intention of maintaining a convenient place for this purpose.

CONCLUSIONS OF LAW

1. Applicant's contemplated appropriation of State water requires a permit from the Texas Water Commission.

2. Applicant seeks a permit under Section 11.121, et seq., of the Texas Water Code and Chapter 11 of the Texas Department of Water Resources Permanent Rules.

3. The Commission has jurisdiction to consider the application and proposal for decision.

4. The Commission has complied with Sections 11.134 and 11.147 of the Texas Water Code.

5. Application No. 4492 should be granted and a permit issued with the terms and conditions as attached hereto, including a limitation that the effective crest of the dam not exceed 501.4 feet above mean sea level.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS WATER COMMISSION that Application No. 4492 be granted in accordance with the terms and conditions contained in the attached permit.

The Chief Clerk of the Commission is directed to forward a certified copy of this Order and attached permit to all

parties and, subject to the filing of motions for rehearing,
to issue the attached permit and forward same to the County
Clerk of Caldwell and Guadalupe Counties, Texas for recording.

Signed this day of , 1985.

TEXAS WATER COMMISSION

Paul Hopkins, Chairman

Lee B. M. Biggart, Commissioner

Ralph Roming, Commissioner

ATTEST:

Mary Ann Hefner, Chief Clerk

4. POINT OF RETURN

Water diverted under this permit shall be returned to the San Marcos River approximately 12 feet downstream of the intake point.

5. SPECIAL CONDITIONS

(a) This permit and all authority granted hereunder are specifically subordinated, as to priority of time, to all present and future rights to use the waters of the San Marcos River for any authorized purpose.

(b) When ordered to do so by the Department, permittee shall provide a means to pass inflows past the dam in such quantities as may be necessary to satisfy the rights of downstream domestic and livestock users and the senior and superior rights of other authorized users.

(c) The height of the dam is limited to an effective crest of 501.4 feet above mean sea level, which is the top of the concrete dam existing on the date of filing, September 25, 1984.

This permit is issued subject to all superior and senior water rights in the Guadalupe River Basin.

Permittee agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this permit.

All other matters requested in the application which are not specifically granted by this permit are denied.

This permit is issued subject to the Rules of the Texas Department of Water Resources and to the right of continual supervision of State water resources exercised by the Department.

TEXAS WATER COMMISSION

DATE ISSUED:

Paul Hopkins, Chairman

ATTEST:

Lee B. M. Biggart, Commissioner

Mary Ann Hefner, Chief Clerk

Ralph Roming, Commissioner