

BEFORE THE DIVISION OF WATER RIGHTS
DEPARTMENT OF PUBLIC WORKS
STATE OF CALIFORNIA

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IN THE MATTER OF APPLICATION NUMBER 3277 of CARSON & TAHOE LUMBER
AND FLUMING COMPANY TO APPROPRIATE FROM ELLIS CREEK IN PLACER COUNTY
FOR THE PROPAGATION OF FISH AND FOR SCENIC PURPOSES

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DECISION NO. 3277 D 73
Decided October 2, 1925

APPEARANCES AT HEARING HELD JUNE 10, 1924:

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| For Applicant - | H. F. Droste, Attorney at Law, Mills Building, San Francisco, Cal. |
| For Protestant, | R. Draesner, 330 Jackson St., San Francisco, California. |
| Examiner , | Edward Hyatt, Jr., Acting Chief of Division |

O P I N I O N

This is an application to appropriate one and one-half cubic feet per second from Ellis Creek in Placer County to be used in the improvement of the scenic beauty of Quail Lake and the propagation of fish in said lake. The application was filed by Carson & Tahoe Lumber and Fluming Company on March 3, 1923, was in due course sufficiently completed for advertisement and was protested by Louise Westhoff. The matter was investigated by an engineer of this office on August 25th and 26th, 1923, and in due course came on for hearing upon proper notice.

The situation, briefly stated, is as follows:

Protestant some years ago constructed a small ditch from Ellis Creek to Quail Lake from which water is led by a pipe line to McKinney's Resort on the shore of Lake Tahoe where the water is used for domestic purposes and the generation of power. Quail Lake is a small natural lake the capacity of which was increased by the owners of McKinney's Resort by means of construction of a low dam at the outlet. This dam, the entire lake, the major portion of the ditch leading from Ellis Creek to the lake and a portion of the pipe line leading from the lake to McKinneys' Resort are upon land owned in fee simple by the applicant, Carson & Tahoe Lumber and Fluming Company. This construction was completed and use of the water made for some years without objection on the part of applicant, who claims not to have known that a trespass was being committed upon his property.

An action was brought by applicant to eject the protestant and enjoin further trespass and this terminated in a judgment by the Superior Court of Placer County (Case 6287) in favor of defendant, who is the protestant in this matter. This judgment found that the defendant (protestant in this matter) was the owner of an easement and right of way over the lands of plaintiff (applicant in this matter) for the maintenance and operation of the aforesaid ditch, pipe line, lake and dam, and further that,

"That the said defendant, Louise C. Westhoff, is the owner of the easement and right to divert water from the said Ellis Creek in and to the said Quail Lake through the said ditch as now constructed to the extent necessary to fill and keep filled the said Quail Lake at all times when the same is not naturally filled by the waters of said lake, and to enable the

said Louise C. Westhoff to divert from the said Quail Lake and through the said pipe line water to the extent of 25 miner's inches of water under a four (4") inch pressure from the first day of April to the first day of November of each year, and when the water of said creek is insufficient for that purpose then to divert all of the waters of the said creek and carry the same through the said ditch to the said Quail Lake, and through the said pipe line during the said period."

It was further decreed that,

"That the title of the said defendant, Louise C. Westhoff, in and to the rights and easements above described is quieted against the plaintiff, and the said plaintiff and its servants and agents and attorneys and all persons acting by, through or under it be and they hereby are forever enjoined and restrained from making any claim adverse thereto, or from interfering with the use or enjoyment thereof by the said defendant."

The applicant maintains that there is a very considerable loss in the transportation by protestant of water from Ellis Creek to Quail Lake, and that it is possible and practicable to construct a flume to replace the ditch and increase the diversion from Ellis Creek into Quail Lake to such an extent as to keep the lake filled, or nearly so, thereby preventing the exposure of unsightly mud flats and rendering it possible to propagate fish in the lake. These are the purposes of the appropriation which he proposes as stated in his application.

The applicant further maintains that protestant is diverting through the pipe line from Quail Lake far more than the 25 inches measured under 4 inch pressure allowed in the judgment heretofore quoted and that this is a contributing cause in lowering the lake level to the injury

of applicant, and that therefore if applicant himself had a valid appropriative right as sought under this application he would be in a position to enjoin such excess. This point was raised at the hearing and urged with such earnestness that it was agreed by all parties that applicant should install a measuring device upon the pipe line leading from Quail Lake to McKinney's Resort and determine the facts.

This meter was to have been installed within thirty days from date of this hearing but this time was extended until October 15, 1924, upon a representation by applicant that it could not be done without interference with the use of the pipe line by protestant. Subsequently the time for installing this meter was extended until June 1, 1925, upon a representation by applicant that the season had become so far advanced as to make it impractical during the fall of 1924. Applicant failed to undertake the work until protestant was using the pipe line during the spring of 1925 and on July 14, 1925, requested an alternative method of obtaining the same information, representing that an account of the opposition of protestant it was feared the meter could not be made to operate successfully.

As an alternative method applicant suggested measurement of the inflow into Quail Lake via applicant's ditch and an estimate of the loss by evaporation from Quail Lake, and thereby a deduction as to the amount used by protestant.

The field investigations made by the Division would indicate that the loss in the diversion ditch of protestant between Ellis Creek and Quail Lake is not excessive as compared with other similar cases

of appropriation. There is, however, a considerable loss from the lake by seepage under the dam. Applicant has made no suggestion for reducing this loss, and the evidence which he has introduced as to excessive loss from the present ditch of protestant is inconclusive as is also the evidence introduced by him as to excessive use by protestant.

More than two and one-half years have elapsed since the filing of this application without progress by the applicant in the matter of accurately ascertaining the truth of the matters upon which the feasibility of his project turns. Under date of August 18, 1925, applicant was advised that since other steps to clear up the doubtful points had not been taken, opportunity to argue the matter in brief would be afforded and that his opening brief would become due within 20 days from that date. No such opening brief has been filed, and the matter is therefore decided on the basis of information now available.

It appears that in a normal year the run-off naturally tributary to Quail Lake is sufficient until about July 15th to keep the lake full to the present spillway level and that the applicant does not propose raising the existing dam. It appears further that when the run-off naturally tributary to the existing lake is no longer sufficient to maintain a full reservoir protestant diverts from Ellis Creek all of the flow of that stream at her point of diversion, or such an amount thereof as is required to keep the reservoir full, and it appears further that her right so to do has been quieted by suit in the Superior Court of Placer County as noted above.

There is some seepage from protestant's ditch which could be salvaged by conveying the water from Ellis Creek to Quail Lake in a pipe line, flume, or concrete lined ditch, but it does not appear

It therefore appears proper that this application should be rejected without prejudice to applicant's right to re-file at a future date should he find himself in a position to overcome the present preponderance of evidence that approval of the present application can only result in interference with the vested rights of protestant.

O R D E R

Application Number 3277 for permit to appropriate water having been filed with the Division of Water Rights, a protest having been filed, a public hearing having been held, and the Division being now fully informed in the premises,

IT IS HEREBY ORDERED that said application be rejected and cancelled upon the records of the Division of Water Rights.

DATED at Sacramento this second day of October, 1925.



CHIEF OF DIVISION OF WATER RIGHTS
DEPARTMENT OF PUBLIC WORKS
STATE OF CALIFORNIA

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