

Before the Division of Water Resources
Department of Public Works
State of California

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In the Matter of Applications 9437 and 9465 of Idyllwild
Water Company to appropriate from Strawberry Creek
and its Tributaries Marion Creek and an Unnamed
Creek (sometimes called Little Tahquitz Creek)
In Riverside County for Domestic Purposes.

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Decision A. 9437, 9465 D. 496

Decided *January 20, 1943*

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APPEARANCES AT HEARING HELD AT RIVERSIDE, APRIL 20, 1939

For Applicant

Idyllwild Water Company

L.J. Coughlin, Vice Pres.
Fred L. Hamblin, Attorney

For Protestants

Fern Valley Mutual Water Company

C.F. McFarland

Idyllwild Mountain Park Company

C.F. McFarland

Lake Hemet Water Company & Fairview
Land and Water Company

A. Heber Winder

Mrs. Ernestine M. Pulsifer

In propria persona

George W. Thomason

W. J. Pulsifer

E. M. Swindler

W. J. Pulsifer

Scott O'Dell

present, but no
appearance

Fern Valley Tract Improvement Assoc.

Earl W. Grob

Eveline Kennedy

No appearance

Sherman L. Strock

No appearance

R. W. Kopenhaver	No appearance
E. D. Miller	No appearance
J. S. Manchester	No appearance
Harold A. and Florence E. Pulliam	No appearance

Description of the Applications

Application 9437 was filed by the Idyllwild Water Company on October 8, 1938. It proposes an appropriation of 0.25 cubic foot per second throughout the year from Marion Creek, a tributary of Strawberry Creek in Riverside County for domestic purposes at a subdivision consisting of 892 lots in Sections 7 and 18, T 5 S, R 3 E and Section 13, T 5 S, R 2 E, S.B.B.M. as shown upon a map filed in support of the application. The point of diversion is described as being within the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 6, T 5 S, R 3 E, S.B.B.M.

Application 9465 was filed by the Idyllwild Water Company on November 30, 1938. It proposes an appropriation of 0.20 cubic foot per second throughout the year from Strawberry Creek, tributary to Strawberry Valley, thence San Jacinto River in Riverside County and 0.20 cubic foot per second throughout the year from an unnamed creek (sometimes called Little Tahquitz Creek) tributary to Strawberry Creek, or a total of 0.40 cubic foot per second for domestic purposes at the same subdivision described above and also within the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 13, T 5 S, R 2 E, S.B.B.M.

Protests

Application 9437 was protested by Miss Eveline Kennedy, Scott O'Dell, Sherman Strock, R.W. Kopenhaver, E. D. Miller, J.S. Manchester, Harold A. and Florence E. Pulliam, Lake Hemet Water Company and Fairview

Land and Water Company, George W. Thomason and Fern Valley Tract Improvement Association.

Application 9465 was protested by Ernestine M. Pulsifer, E.M. Swindler, Lake Hemet Water Company and Fairview Land and Water Company, Scott O'Dell, Fern Valley Mutual Water Company, R. W. Kopenhaver and Idyllwild Mountain Park Company.

Miss Eveline Kennedy, E. D. Miller, Joseph S. Manchester, Harold A. and Florence E. Pulliam and Sherman Strock own lots on the easterly bank of Marion Creek within Tract No. 7 of Idyllwild Mountain Park Company. These protestants allege in effect that when the water supply of the Idyllwild Mountain Park Company fails, they are dependent upon the waters of Marion Creek to which they are riparian; that comparatively high prices have been paid for the lots because they are located upon the stream and that should Application 9437 be approved it would result in the drying up of the stream bed, causing the trees and vegetation along its banks to die, increasing the fire hazard and the danger from floods and would render their property less valuable from a scenic and recreational standpoint.

Protestants George W. Thomason, Ernestine M. Pulsifer, E. M. Swindler and E. W. Grob, president of Fern Valley Tract Improvement Association, occupy lots within the Fern Valley Special Use Tract of the U.S. San Bernardino National Forest, which tract is supplied with water from Marion Creek under Application 6023 of the U.S. San Bernardino National Forest, object to the approval of Application 9437 to appropriate from Marion Creek. These protestants are concerned only with the decreased recreational value of the area which may occur from the reduction of the amount of water which flows through it. Mr. Thomason is also concerned lest the approval of Application 9437 would increase the fire hazard.

Objections were also entered by Ernestine M. Pulsifer and E. M. Swindler against the appropriation of water from Little Tahquitz Creek under Application 9465 apparently under the false assumption that Little Tahquitz Creek was another name for Marion Creek.

Scott O'Dell, R. W. Kopenhaver and Lake Hemet Water Company and Fairview Land and Water Company entered protests against the approval of both applications.

Scott O'Dell claims a right to divert water from Strawberry Creek at a point within the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 27, T 5 S, R 2 E, S.B.B. & M. by virtue of riparian ownership and use since January 1935 to the extent of 0.20 miners inch for domestic, irrigation and fire protection purposes. He alleges in effect that the amount of water usually flowing in Strawberry Creek during the summer is barely sufficient to supply his irrigation and domestic needs and that the approval of Applications 9437 and 9465 would not only interfere with his rights but would increase the fire hazard and render Strawberry Creek worthless as a trout stream.

R. W. Kopenhaver claims a right to divert water from Strawberry Creek at a point within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 27, T 5 S, R 2 E, S.B.B.M. by virtue of riparian ownership. Water is dipped from the stream at intermittent intervals for domestic purposes. Mr. Kopenhaver alleges in effect that should Applications 9437 and 9465 be approved, it would result in interfering with his domestic water supply, with the water supply for the travelling public, for fire protection purposes and for the maintenance of fish life.

Lake Hemet Water Company and Fairview Land and Water Company in a joint protest against the approval of Applications 9437 and 9465 claim

the right to the use of the waters of Strawberry Creek and its tributaries based upon riparian ownership and use commenced prior to the effective date of the Water Commission Act. Their point of diversion is located on the San Jacinto River at the center of the $S\frac{1}{2}$ of $NE\frac{1}{4}$ of Section 28, T 5 S, R 2 E, S.B.B.M. They claim that water has been applied to more than 8000 acres and is used by more than 5000 people for domestic purposes. They allege in effect that all of the waters of Strawberry Creek and its tributaries have been appropriated and therefore none are available for appropriation by applicant.

Hearing Set in Accordance With
Section 1a of the Water Commission Act

Applications 9437 and 9465 were completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Resources and being protested were set for public hearing in accordance with Section 1a of the Water Commission Act on Thursday, April 20, 1939 at 10:00 o'clock A.M. in Supervisors' Room, Court House, Riverside, California. Of this hearing applicant and protestants were duly notified.

General Discussion

A review of the transcript of the hearing held on April 20, 1939, the briefs filed in connection therewith and other information available to this office indicated that Strawberry Valley was a predominantly recreational area and that further impairment of the summer flow of the streams which contributed thereto would tend to depreciate recreational values; also that further appropriations from these streams could only be justified upon a showing that no other sources were available to the applicant and that further development of the sources already used was necessary to serve existing recreational facilities.

Although this situation had been apparent for some time no steps had been taken by the applicant for a comprehensive investigation of other possible sources, the development of which would not deplete the existing and potential recreational facilities and, in order to afford the applicant an opportunity to conduct such an investigation, action in connection with Applications 9437 and 9465 has been withheld with the understanding that should the investigation indicate that there were other feasible sources of supply the present sources under these applications would be abandoned.

Apparently the applicant was not then financially able to conduct a thorough investigation as proposed by the Division. It did however file Application 9863 on March 27, 1940 for the appropriation of 40 acre feet per annum of the waters of Lilly Creek, a tributary of Strawberry Creek, to be collected to storage from October 1 to June 1 of each season, which application was approved by the Division on October 17, 1940 and on November 12, 1940 filed Application 10061 for storage and direct diversion from Tahquitz Creek, Application 10062 for storage and direct diversion from Bish Spring, tributary to Strawberry Creek and Application 10063 for direct diversion from Wood Spring, tributary to Strawberry Creek.

In May 1941, Idyllwild, Inc., of which the Idyllwild Water Company was a subsidiary, filed under the Chandler Bankruptcy Act and was left in possession of the Idyllwild Water Company to attempt a voluntary reorganization but when it became apparent that such a reorganization was impossible in September 1941 the Court declared Idyllwild, Inc., a bankrupt and on December 19, 1941 its properties including Idyllwild Water Company were sold to the Idyllwild Bondholders Committee and one E. S. Olson, former president of Idyllwild, Inc., employed to manage the affairs of the Idyllwild Water Company.

At the request of Mr. Olson, a conference was arranged with Mr. Conkling at Los Angeles on May 23, 1942, at which it was agreed that Mr. Olson would request the cancellation of Application 9437 and would request a change in the point of diversion described in Application 9465 to a point approximately 1800 feet downstream provided that an agreement to such a change could be arranged with the Fern Valley Mutual Water Company.

Under date of September 4, 1942, Mr. Olson informed the Division that an investigation had been made with the end in view of securing water from other sources that would not deplete the stream flow and in his opinion there were no other sources available as all streams and springs in that locality were very low during the summer season which meant that the applicant would ultimately have to resort to storage. He further stated that the Idyllwild Water Company and its predecessor Idyllwild, Inc. had for many years been using water from Strawberry Creek to supply its consumers and at the present time was diverting the entire day flow which resulted in a dry stream bed during the day with the night flow passing down the stream when the resort visitors could not enjoy it.

The Division then advised Mr. Olson under date of September 15, 1942 to proceed as proposed at the conference.

Under date of September 4, 1942, Mr. Olson informed the Division that the Company did not wish to proceed with Applications 10061, 10062 and 10063 at this time and asked that these applications be cancelled if it were not in order to grant an extension until after the war. As this office did not feel that an extension was in order, the applications were cancelled.

Although Mr. Olson made no mention of Applications 9437 and 9465, applicant is apparently in no better position to proceed with these two

applications than it was with the later applications. No petition has been filed to change the point of diversion under Application 9465 although nearly 8 months have elapsed since the change was proposed. We feel therefore that Applications 9437 and 9465 should also be cancelled, first upon the grounds that there is not sufficient summer flow in the streams to justify the approval of the applications and secondly because the applicant is apparently not in a position to proceed with the developments.

ORDER

Applications 9437 and 9465 for permits having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 9437 and 9465 be rejected and cancelled upon the records of this office.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this *20th* day of *Jan.* 1943.

Edward Hyatt, State Engineer

By *Harold Conkling*
Deputy State Engineer

