

STATE OF CALIFORNIA  
DEPARTMENT OF PUBLIC WORKS  
BEFORE THE STATE ENGINEER AND  
CHIEF OF THE DIVISION OF WATER RESOURCES

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In the Matter of Applications 12865, 12866, 13108 and 13109 by Harold Ladd Pierce to appropriate water from Whitewater River, Snow Creek and Lamb Creek in Riverside County for Domestic, Irrigation, Stockwatering and Industrial Purposes.

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Decision A. 12865, 12866, 13108, 13109 D. 762

Decided September 25, 1952

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Appearances at Hearing Held at Riverside on April 29, 1952:

For the Applicant

Harold Ladd Pierce

Harold Ladd Pierce

For the Protestants

Coachella Valley County )  
Water District )  
Whitewater Mutual Water )  
Company )

Earl Redwine

Bar Bell Ranch

E. F. Dibble

Palm Springs Water  
Company

Roy W. Colegate

Southern Pacific  
Company

Paul V. DeFord

Stuart D. Allen

Stuart D. Allen

John Van Pelt

John Van Pelt

For an Interested Party

S. A. Giberson, Jr.

Clifford Enger

EXAMINER - GORDON ZANDER, Assistant State Engineer, for A. D. EDMONSTON, State Engineer.

Also present: J. J. Heacock, Senior Hydraulic Engineer, Division of Water Resources, Department of Public Works.

OPINIONGeneral Description of the Projects

Under Application 12865 it is proposed to appropriate 0.5 cubic foot per second from Whitewater River and an equal amount from Snow Creek, year-round, for domestic purposes and irrigation, at points located respectively within Lot 2 of Section 2 and within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 33 of T3S R3E, S33&M. It is also proposed to appropriate 7 acre-feet per annum from either or both of those sources, for the same purposes and at the same points of diversion, that amount to be collected between October 1 and April 30. The project includes 2 diversion dams, one of them 12 feet long by 6 feet high and the other 40 feet long by 4 feet high, also a storage dam 200 feet long by 40 feet high, the latter structure creating a reservoir 0.5 acre in surface area and 7.0 acre-feet in capacity. It also includes 8000 lineal feet of 24 inch and 5000 lineal feet of 12 inch concrete pipe, also 16,000 lineal feet of 6 inch steel pipe. Domestic use is proposed at 400 half-acre home sites within Sections 15, 16, 22, 23, 24, and 25 of the above designated township, and 320 acres of alfalfa, general crops and pasture located within Sections 10 and 15 are to be irrigated.

Application 12866 closely parallels Application 12865. It contemplates diversions from the same sources, at the same locations and by means of the same facilities. It initiates appropriations however of 1.0 cubic foot per second from Whitewater River, 1.0 cubic foot per second from Snow Creek and 7.0 acre-feet per annum from either or both of those sources and specifies that the water is to be used for domestic and industrial purposes, the latter being described as "production of wet process cement and washing gravel aggregate."

Application 13108 contemplates an appropriation of 0.25 cubic foot per second, year-round, plus 10 acre-feet per annum, the latter to be collected during the months of January to June, both inclusive. The water is to be diverted from Lamb Creek at a point within the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 20, T3S R3E, SBB&M. Diversion is to be by means of a concrete and earth dam, 4 feet high by 30 feet long. The proposed storage reservoir is described as a natural sump located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 16 and having a surface area of 1 acre and a capacity of 10 acre-feet. The project includes a 4 inch pipe line, 13,200 feet long. The water is to be used for domestic and industrial purposes within Section 16 of the same township. Forty half-acre home sites are to be furnished a domestic supply and water is to be used industrially in connection with cement production and gravel washing.

Application 13109 is a near duplication of Application 13108, the source, point of diversion, amounts, diversion facilities and conduit being the same in the two applications. Application 13109 differs in that use thereunder is to be for domestic purposes, irrigation and stockwatering, within the N $\frac{1}{2}$  of Section 16.

#### Protests

The Coachella Valley County Water District protests all of the applications, claiming that it has permits covering all available water, and that under those permits (Nos. 536 and 3011) it has completely and beneficially used all available water. The protest states in part:

"From 1895 - - - water has been taken from the closed underground basin of Coachella Valley by wells for domestic use and - - - irrigation - - -. - - - waters - - - under permits - - - are carefully diverted to gravel areas where surface waters are put underground for use from the well system. - - - - some 20000 acres have their supply - - - - from the water covered by the permits of this District - - -. In addition all of the towns - - - except Palm Springs, as well

as all farm homes obtain their domestic water supply from the underground water covered at the point of diversion by Permits 536 and 3011. Continuous well observations recorded by this District show clearly that there has been used beneficially under the terms of the existing permits all the inflow into the area. - - - For at least 25 years, the reserve basin of the Valley has been depleted each year and it is not conceivable that such depletion of the underground supply will materially change."

The Southern Pacific Company and Southern Pacific Railroad

Company protest the four applications, claiming that the diversions proposed therein will deprive them of "water required and applied to beneficial use for railroad and domestic purposes at and adjacent to the railroad stations at Palm Springs (formerly Whitewater) and Garnet - - -." They claim a right based upon "prior application and appropriation to beneficial use since October 24, 1899, evidenced by certificate of adjudicated water right No. 666 issued by Division of Water Resources on March 8, 1939." They claim to be entitled to and/<sup>to</sup>apply to beneficial use "2.00 cubic feet per second of the natural flow of Snow Creek for railroad and domestic purposes" throughout the year. They state that they have used water from Snow Creek since 1899, that their diversion heads within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 33, T3S R3W, SBB&M, and that their protest may be disregarded and dismissed if the application is amended to eliminate appropriation from Snow Creek. They allege that there is no unappropriated water in Snow Creek and that the entire natural flow of that stream is insufficient to supply the reasonable requirements of the present users. They deny that any water appropriated from Snow Creek is unlawfully used or wasted. They contend that the applicant lacks ownership or right of access to the points at which he proposes to divert.

The Bar-Bell Ranch protests the 4 applications alleging that the diversions therein proposed will cause a lowering of ground water levels

and increased pumping costs. It asserts that use of water on its property began in 1923 and that it pumps some 8000 acre-feet per annum, for domestic purposes and irrigation. It claims to divert at 4 points described as being located respectively within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 21, the SE $\frac{1}{4}$ NE $\frac{1}{4}$  and the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 28, and the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 27, all within T4S R6E, SBB&M.

The Palm Springs Water Company protests all of the applications, claiming that the diversions proposed therein would interfere with its use of water for domestic and municipal purposes. It claims riparian and appropriative rights and it asserts that its rights have been adjudicated. It states that it diverts from Snow Creek at a point within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 33, T3S R3E, which point is the same as one of the points at which the applicant proposes to divert, that that point is on land which it (the protestant) owns and into which the applicant has no right of access. It contends that the proposed industrial use would pollute and contaminate waters of both Snow Creek and Falls Creek. It claims also to divert from Snow Creek at a point within Section 33, T4S R4E, SBB&M and to divert from Falls Creek within the same section. As to Lamb Creek it disclaims present use but claims the right to divert in future and asserts that growth of its service area will necessitate increased use.

Stuart D. Allen protests Applications 12865 and 12866. He claims to divert at points within Sections 2, 11 and 24 of T3S R3E, SBB&M, under adjudicated rights and riparian rights. He contends that the proposed diversion will interfere with his own diversions and use of water. He asserts that all of the water that the applicant seeks has long been appropriated and beneficially used.

Whitewater Mutual Water Company protests Applications 12865 and 12866. It contends that the diversions proposed by the applicant will

diminish its own supply. It claims an adjudicated right and in that connection refers to Action No. 18035, Superior Court in and for Riverside County. It claims to divert at a point within Lots 2 and 3 of Section 2, T3S R3E, SBB&M. It asserts ownership in fee of the Lot 2 described, within which lot, it states, the applicant also proposes to divert. No conditions are stated under which its protests may be disregarded and dismissed. With reference to its claimed rights this protestant further states:

"The adjudication of relative rights in the Whitewater River was recorded in Book 46 of Judgments, at page 246, Records of Riverside County, California, the 9th day of December, 1938. Said adjudication determined the rights to the full flow of Whitewater River and any appropriation made at this time necessarily diminishes the amount as granted under that adjudication."

#### Answers

No answer to any of the above mentioned protests is of record.

#### Hearing Held in Accordance with the Water Code

Applications 12865, 12866, 13108 and 13109 were completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources and, being protested, were set for public hearing under the provisions of Article 13, Section 733(a) of the California Administrative Code, Title 23, Waters, on Tuesday, April 29, 1952 at 10:00 o'clock AM, in the Board of Supervisors' Hearing Chamber, Courthouse, Riverside, California. Of the hearing the applicant and the protestants were duly notified.

#### Discussion

At the hearing, prior to testimony by witnesses, Applicant Pierce stated as follows:

"Due to the death of the attorney, Mr. Enger, who is here today, is not prepared to go into the situation. I plead for time to go into this situation."

Clifford Enger then stated:

"I am appearing as counsel for S. A. Giberson, Jr., and I am here as an observer to determine what proceedings take place with reference to his rights. Mr. Giberson is owner of considerable property affected in this area. He intends to build a cement plant - - - and, naturally, the disposition of the water in that area is going to affect him. Mr. Giberson has been represented by an attorney by the name of Zach Lamar Cobb, but Mr. Cobb has died and all the records and papers pertaining to the title situation and everything else have been impounded in Mr. Cobb's estate. - - - - Mr. Pierce has made these applications in his name, it is in agreement with Mr. Giberson, who has been ill. - - - -"

Testimony at the hearing was as follows:

Harold Ladd Pierce testified (pages 11 to 20 of transcript) to the effect that one purpose in filing is to be able to conserve waters that come down Snow Creek Canyon, that surplus waters from that source are being diverted around his proposed place of use and directed into Whitewater River or elsewhere, that the lands upon which water is to be used under the applications should be protected ahead of new lands being sold in the Palm Springs and Coachella Valley area, that the Coachella Valley County Water District protest is invalid because of the abundance of their supply from other sources, that he (Pierce) is an engineer endeavoring to work out a plan to develop certain properties, that his proposed appropriation is affected by changes that have been made and are being made in the water courses, and that he (Pierce) wishes to learn about the protests in order to more intelligently work out a plan of action. On cross examination Mr. Pierce testified further (pages 21 to 41 of transcript) that he is a process engineer, mechanical engineer and chemical engineer, that there is a Giberson Whitewater Cement Company, that "we" (presumably Pierce and Giberson) do not own the land at the proposed points of diversion but that they had agreements, that the attorney was working out some agreements, that he (Pierce) personally owns 357½ acres in

Section 16, a small piece of land on Whitewater River and 500 or 600 acres of mining claims, that he has used water for domestic and testing purposes on his property and has done certain development work and research, that due to Attorney Cobb's death he (Pierce) doesn't know the status of negotiations. William Penn Rowe testified (pages 51 to 54 of transcript) to the effect that he is consulting engineer to the Coachella Valley Water Company, that since 1918 there has been a gradual and consistent lowering of ground waters underlying Coachella Valley, that the rate of such lowering has averaged about 1 foot per year, that the fact of such lowering indicates that use of water exceeds supply, that all the water in the Whitewater stream system is being used and that Salton Sea is rising but that the water causing it to rise does not come from Whitewater River.

Stanley B. Carlson testified that he is Vice-President and engineer of the Whitewater Mutual Water Company, that that company holds the fee title to Lot 2, Section 2, T3S R3E, that there are no arrangements or agreements in effect by which the applicant or any other person has the right of access to the point of diversion stated in Applications 12865 and 12866, and that there has never been any discussion toward that end.

E. N. Merith testified (pages 58 to 67 of transcript) that he is Superintendent of the water services for the Southern Pacific Company, Los Angeles Division, that the Palm Springs water supply is within his jurisdiction, that water for the Palm Springs water supplies is diverted from Snow Creek at a point within a designated quarter quarter section, that at that point the Southern Pacific Company and the Palm Springs Water Company maintain joint diversions and joint pipeline connections, that the Southern Pacific pipes 2 cubic feet per second from the point mentioned to water tanks at Palm Springs Station for use for domestic and engineering purposes, that there is a connection leading from Palm Springs Station to Garnet Station, that



no water is wasted either at Palm Springs or Garnet and that trees used as sandbreaks and windbreaks are irrigated by means of overflow from the tank.

Mr. Lathrop, Assistant Engineer, Southern Pacific Company, Los Angeles Division, testified (pages 67 to 76 of transcript) that he has charge and supervision over the diversion works jointly maintained by Palm Springs Water Company and Southern Pacific Company, that he (Lathrop) has never given permission to the applicant to use any part of those water facilities, that he has never had any negotiations to that end, that the amounts diverted by the Southern Pacific Company are reasonably required for present and future railroad use, that water requirements are more apt to increase than to decrease, if, as contemplated, steam turbine locomotives supplant Diesel power, and/or if activities in the control of land movement expand.

Edward Fitzgerald Dibble testified (pages 76 to 79 of transcript) that he is a consulting engineer, that 500 acres of the Bar-Bell Ranch are irrigated, that water for such irrigation is obtained from a group of wells, that the wells tap ground waters underlying Coachella Valley, that the wells produce in all about 900 miner's inches, that ground water levels have been falling since 1947 or earlier, that the wells are charged by mountain runoff including Whitewater River drainage, that additional diversions from tributary streams will hasten the exhaustion of ground water, and that the damage resulting from an additional diversion would be in proportion to what the amount of that diversion is to the total amount moving down the valley.

Harold J. Hicks testified (pages 79 to 83 of transcript) to the effect that he is president of the Palm Springs Water Company, that that company has not granted access rights to any point within Section 3, T3S R3E, SBB&M to Harold Ladd Pierce or to anyone else for the purpose of entering and taking

water, that no such grant is intended and that the matter of development and sale of surplus water was discussed with Mr. Pierce but no agreement reached.

Edward R. Bowen testified (pages 86 to 92 of transcript) to the effect that he is a consulting engineer for the Palm Springs Water Company and has been familiar with the operations of that company since 1936, that from the time in 1948 when Mr. Pierce's application was filed all waters of Snow Creek except floods have been diverted and used, mainly for domestic purposes, in Palm Springs, that the Palm Springs Water Company also has to pump substantial amounts of water, that the Southern Pacific also pipes some water into the Palm Springs area for domestic service, that there is no wastage in his opinion at the Southern Pacific tanks or into Whitewater River, that occasionally water is spilled as a result of a mechanical difficulty or as an incident to the efficient operation of a long pipeline but that such spillage does not constitute waste, that flood waters are not diverted but pass downstream and for the most part percolate into the ground, either from the stream channel or from its delta.

Stuart D. Allen testified (pages 92 to 96 of transcript) to the effect that the applicant's proposed diversion, heading  $4\frac{1}{2}$  miles upstream from his own, would interfere with the exercise of his (Allen's) own rights, that the entire flow of the stream is owned and held and used beneficially by one or another of a number of parties of whom he is one. His testimony also included numerous details relating to his water right and use of water.

A group of photographs is mentioned on page 44 of the transcript. The examiner stated with reference to said photographs (on same page 44), "In the meantime there is this folder of record which Mr. Pierce has evidently

sent in to the Division some time in the past." Applicant Pierce thereupon remarked, "It was sent in with the original filing there on file." The Examiner continued, "They are on file for whatever they may be worth to you. They are not, however, an exhibit in this hearing." Thereupon a recess was taken, during which the photographs were available for examination by the parties. On conclusion of the recess Mr. Redwine (representing Coachella Valley County Water District and Whitewater Mutual Water Company) stated, with reference to the photographs:

" - - - I don't think we have any particular objection to marking them for identification if you want to carry them in your files, but we certainly are going to object to these being received as evidence because - - - - we don't know where they came from and the typewritten legend is hearsay."

Mr. Colegate, representing Palm Springs Water Company, stated:

"As far as the Palm Springs Water Company is concerned, I don't think any of them are pertinent to the part of the issues we are concerned with and we therefore object to them. - - - - our objection is also predicated on the ground there is no foundation laid for them."

Mr. DeFord stated in the same connection:

"On behalf of the Southern Pacific Company and the Southern Pacific Railroad Company, I object to the introduction of the photographs on the same grounds as Mr. Redwine."

The Examiner then announced (page 46 of transcript):

"Well, for the purpose of identification, the Division of Water Resources Application No. 12865, Folder 3, marked 'Miscellaneous Data' will be designated 'Applicant's Exhibit No. 1.' The objections have been recorded in the record and they will be given due consideration when they are reviewed by the legal staff and the State Engineer."

The photographs in question and the annotations which they bear are, in the opinion of this office, inadmissible as evidence. This is because of the vagueness of the annotations, the fact that they are unsworn and unsupported by testimony, and the resultant uncertainty as to what the photographs truly represent.

The applicant's presentation of his case is conspicuous for a lack of showing that unappropriated water exists and that right of access to the proposed points of diversion has been secured. The protestants on the other hand adduce testimony which while not conclusive nevertheless suggests strongly that unappropriated water does not exist. Testimony by protestants' witnesses also point to a conclusion that the applicant lacks necessary rights of access.

The relative appropriative rights of the various claimants to the use of waters of Whitewater River and tributaries were determined in Action 18035, Superior Court, Riverside County and the results were announced in a decree dated December 9, 1938. The decree states, among other things:

"The Whitewater River rises on the south and east slopes of San Geronimo Mountain, in the southwestern part of San Bernardino County - - - and flows in a general southeasterly direction for - - - about sixty-five miles, traversing the central part of Riverside County, and empties into Salton Sea - - -. Except in times of extreme flood, the entire flow of said river sinks into the desert between Whitewater Station and Palm Springs Station, on the Southern Pacific Railroad."

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"The various tributaries of the Whitewater River have built up debris cones where they debouch from their respective canyons, and except in times of flood, their entire flows sink in these cones, travelling through underground channels to the lower part of Coachella Valley. The total area drained by the Whitewater River stream system is about 1200 square miles."

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"The successful production of crops on all cultivated lands in the Whitewater River watershed is dependent upon irrigation and since the water supply of the stream system is inadequate for all agricultural needs throughout each irrigation season, it is essential that the rights in and to said supply be determined in order that there may be an orderly distribution of the same to the rightful owners."

The entitlements, in acre-feet per annum, under the decree, of Coachella Valley County Water District, on certain streams, and subjected to certain specified conditions, are as follows:

From Whitewater River	80,000	(priority 1918)
From Whitewater River	20,000	(priority 1922)
From Snow Creek	8,000	
From Falls Creek	2,000	

No satisfactory estimate of the gross yield from the watershed of Whitewater River or from the watershed of any of its tributaries is at hand. In this connection however the University of California publication "Hydrologic Studies in Coachella Valley, California" by Huberty, Pillsbury and Sokoloff, (June, 1948) states as follows:

"Although the watershed has an area of about 1200 square miles the mean annual discharge is not large since the greater part of the shed is desert. Only during flood stage does surface water reach Salton Sea, as the normal flow quickly enters the highly permeable alluvial fans. In fact, with the exception of a small area in and above Palm Springs, all irrigation water in Coachella Valley is now obtained from wells."

"Measurements of the amounts of water entering Coachella Valley are very deficient. The U.S. Geological Survey made a few isolated readings at the end of the last century, and for a number of years the Coachella Valley County Water District made measurements on eleven streams discharging into the valley. Unfortunately these measurements were made intermittently. As it is not feasible to reach most of the stations during flood period, when the run-

off during a few days might exceed the combined run-off for the remainder of the year, the figures given do not truly represent total flow. They do indicate that the flow varies widely from year to year, and that the highest sustained run-off occurs during April. Whitewater River, Snow and Tahquitz Creeks are perennial streams from their source to the edge of the Valley."

The same publication also states:

"Ground Water Levels. - In the past, estimates have been made of the 'safe yield' of Coachella ground-water - the rate at which it can be pumped throughout the valley without exceeding the supply. It is our opinion that there are not enough data available to make an accurate estimate of safe yield. Certainly the supply appeared to be adequate for the irrigated area of the period 1936-1939 and could possibly be adequate, with careful use, for a greater area. During that period withdrawal from wells appears to have been about 100,000 acre feet a year. - - -"

A one year record (year ending September 30, 1920) of the flow of Whitewater River at a point within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 25, T2S R3E and of the combined flow of Snow and Falls Creeks in the vicinity of their confluence, based upon gagings made by Coachella Valley County Water District is set forth in Tables 1 and 2 of "Report on Water Supply and Use of Water from Whitewater River Stream System," November, 1923, prepared in connection with the Whitewater River Adjudication proceedings. Mean monthly discharges in cubic feet per second of those 2 streams for the one year of record, according to that reference, were as follows:

<u>Month</u>	<u>Whitewater River</u>	<u>Snow and Falls Creeks (combined)</u>
October	6.4	4.0
November	7.0	4.0
December	10.0	5.0
January	8.6	5.1
February	41.4	12.6
March	19.7	20.7
April	27.1	28.8
May	24.1	21.3
June	30.6	16.6
July	32.1	11.1
August	24.4	8.5
September	28.3	7.0
Average for year	21.6	12.1

The index of seasonal wetness for the water year 1919-1920 at Cabezon, according to Department Bulletin No. 5 (Flow in California Streams) was 111. The normal flow of Whitewater River at the point where it was gaged may therefore be supposed not to exceed something of the order of 100/111 of 21.6 or 19.5 cubic feet per second; and the normal flow of Snow and Falls Creeks (combined) 10.9 cubic feet per second. Flows averaging 19.5 and 10.9 cubic feet per second are equivalent respectively to flows aggregating 14250 and 7960 acre-feet per annum. Inasmuch as the Coachella Valley County Water District alone, under the Whitewater Decree, is entitled to divert larger amounts than those from the streams mentioned and the other protestants appear to hold substantial rights on the same streams it is clear that the sources from which the applicant seeks to appropriate are already over-appropriated. In view of the apparent non-existence of unappropriated water and the objections of the protestants, set forth in the protests and maintained through the hearing, the approval of Applications 12865, 12866, 13108 and 13109, or of any of them, is unwarranted.

#### Summary and Conclusion

The applicant has failed to establish the existence of unappropriated water in any of the sources from which he seeks to appropriate under the above numbered applications. The limited hydrologic data that are available indicate

the flow of those sources in a normal year to be less than the aggregate of the vested rights to take and use such flow. In view of these circumstances it is the opinion of this office that unappropriated water is ordinarily non-existent in the sources filed upon by the applicant and that Applications 12865, 12866, 13108 and 13109 should therefore be denied.

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ORDER

Applications 12865, 12866, 13108 and 13109 for permits to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 12865, 12866, 13108 and 13109 be rejected and canceled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 25th day of September 1952.

  
A. D. Edmonston  
State Engineer

