

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 Application 12340 by Fern Valley Mutual Water Company to Appropriate Water from Unnamed Tributaries to Strawberry Creek, Strawberry Creek and East Fork Strawberry Creek Tributary to South Fork San Jacinto River in Riverside County for Domestic Purposes.

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Decision A. 12340 D. 797

Decided August 2, 1954

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Appearances at Hearing Held at Riverside on June 24, 1953:

For the Applicant

Fern Valley Mutual Water Company

Harold Conkling
Consulting Engineer

For the Protestants

California State Department
of Fish and Game

Philip A. Douglas
District Fisheries Biologist

Fruitvale Mutual Water Company

Ray W. Bruce
Attorney at Law

Lake Hemet Water Company, Inc.)
Fairview Land and Water Company)

Brobeck, Phleger and Harrison
Attorneys at Law
by Richard Haas

EXAMINER L. C. Jopson, Principal Hydraulic Engineer, Division of Water Resources, Department of Public Works, for A. D. EDMONSTON, State Engineer.

Also Present J. J. Heacock, Senior Hydraulic Engineer, Division of Water Resources.

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OPINION

General Description of the Project

According to the application as worded at the commencement of the hearing it was the applicant's desire to appropriate 0.40 cubic foot per second, year-round, and 30 acre-feet per annum, collected between March 1 and June 30, from any or all of the following sources: unnamed tributaries of Strawberry Creek (tributary to South Fork San Jacinto River), Strawberry Creek and East Fork Strawberry Creek. The application specified, in all, five points of diversion, four of them within Section 5, T5S R3E and one within Section 32, T4S R3E, SBB&M. Diversion was to be effected by means of concrete and rubble masonry dams, 5 feet high and from 10 to 25 feet long, storage to the extent of 30 acre-feet by steel tanks, located off-stream, undescribed as to number and size. The several intakes and the system of storage tanks were to be connected by pipe lines ranging from 2 to 8 inches in diameter. The water was to be used for domestic purposes within Sections 5, 7, 8, 17 and 18, T5S R3E, SBB&M. In addition to such right as might be secured under Application 12340, the applicant claimed rights under approved Applications 8090, 8093, 8120 and 8121. A supplement to the application contained the following general statements:

- "1. Discharge available for direct diversion under past applications is not sufficient to meet present demand during summer months of maximum demand in drought years.
- "2. Field investigations have shown that more water is available at points above the present point of diversion on Strawberry Creek than reaches said present point of diversion The loss is due to consumptive use of vegetation along the stream and to seepage losses Earlier in the month no water was reaching present point of diversion.

- "3. It is proposed to establish three additional points of diversion on the upper tributaries of Strawberry Creek ... to divert water which is now, in part, lost through consumptive use along the stream channel.
- "4. It is further proposed to create 30 acre-feet of off-stream storage through the installation of steel tanks to meet the demand during drought years. Water for storage will be diverted from all points of diversion on Strawberry Creek and from the East Fork of Strawberry Creek, when available. Use of stored water may not be necessary in years of good water yield.
- "5. Total diversion to be applied directly to beneficial use without storage, from all sources will not exceed 0.49 c.f.s., based upon average for the week of maximum demand.
- "6. Water applied for under this application would only occasionally flow out of the Fern Valley Area even if not diverted."

Protests

The California State Fish and Game Commission (now Department of Fish and Game) protested the application, alleging that the appropriation sought thereunder will result in destruction of trout, that trout are normally present and stocked in Strawberry Creek, that the amount of water the applicant seeks to appropriate is greater at times than the flow of the stream and that on May 13, 1948, the flow at one of the proposed points of diversion was less than 0.15 c.f.s. The protest also contains the following statement:

"U. S. Forest Service estimates 302,200 man days' recreational use of the Idyllwild area in 1947 (camping grounds, picnics, tourists, fishermen, etc.) The presence of water in the stream is of greater value to more people than if this same water is utilized to provide the domestic supply for a comparatively few persons."

The Fruitvale Mutual Water Company, through David Brockie, its secretary, protested the application, stating:

"If applicant takes 30 acre feet for storage and 0.40 of a sec. ft. direct, when there is not sufficient flow in San Jacinto River to satisfy the amount of water to which protestant is entitled under his permit No. 468 ... protestant will be injured and deprived of said water."

"Protestant claims a right ... based upon application made by Citizens' Water Company of San Jacinto on or about February 14, 1918, and now owned by protestant, to appropriate 200 second feet of the waters of San Jacinto River by works in Sections 4 and 5, T5S R1W, SBB&M"

"Protestant and its predecessor have been using all of the water available at said point at all times except in very heavy floods and the stockholders of protestant own and are irrigating at the present time 4,500 acres of land and are putting to beneficial use each year approximately 9,000 acre feet of water, under said permit."

The protestant describes its diversion points as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5 and within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, T5S R1W, SBB&M.

Lake Hemet Water Company, Inc. and Fairview Land and Water Company, Inc. protested, alleging:

"The proposed appropriation will ... lessen the flow of water in Strawberry Creek and deprive protestants of the beneficial use of water upon which protestants hold prior valid appropriation for domestic and irrigation purposes, and which has been used continuously for many years last past"

The protestants stated that their diversion point is located at about the center of the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 28, T5S R2E, SBB&M, and that their protest may be disregarded and dismissed if the applicant's appropriation is limited to periods of heavy runoff and periods when flow is more than enough to satisfy their prior rights. The protest contained

other statements as follows:

"Lake Hemet Water Company and Fairview Land and Water Company have operated continuously since incorporated, serving private and public customers. They are, and for many years last past have been ... appropriating and supplying water ... for domestic and irrigation purposes to large tracts of land lying in the San Jacinto Valley ... ; ... the waters of the upper reaches of Strawberry Creek constitute a part of the source of supply ... and any diversion as contemplated by said applicant would if granted, to that extent decrease the supply of each of the said protestants and result in withholding the same from the supply of the users of water under the system of the protestants. The entire flow of Strawberry Creek and water to be ... appropriated by applicant have by these protestants in conjunction, been continuously ... and are now appropriated to beneficial use, to wit: to the irrigation of said land and the supply of domestic water to the inhabitants thereof The right of protestants ... is based upon actual appropriation, diversion and beneficial use continuously for many years last past, and in addition upon the riparian character of the lands of Protestant Fairview Land and Water Company below applicant's intended point of diversion. The lands to which said water has been continuously applied by protestants are situated in the San Jacinto Valley ... in amount upward of 8,000 acres and protestants supply domestic water to the inhabitants of said body of land upward of 7,000 in number. This land embraces the city of Hemet, the town site of Florida and surrounding valley land to the total approximate extent of over 8,000 acres The primary source of water for the area served is from the Lake Hemet Water Company and Fairview Land and Water Company which companies rely heavily on the water originating in Strawberry Creek. The population growth in this area since 1940 has been approximately 30% to date and it is obvious that the increase will continue and, of course, domestic water requirements will continue to expand."

Idyllwild Water Company protested, stating as grounds

therefor:

"The applicant has moved its water intake up-stream and built off-stream storage in such volume that none of the natural flow reaches our intake, and as a result the stream is dry prior to June 1."

The protestant claims a riparian right. It describes its point of diversion as being located within NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8, T5S R3E, SBB&M. It offers terms under which the protest may be disregarded and dismissed as follows:

"Limit diversion for off-stream storage and permit right of way to Idyllwild Water Company for pipeline to the Idyllwild Company's intake on Little Tahquitz Creek."

Answers

In answer to protest of California State Fish and Game Commission the applicant states:

"After thorough investigation ... the present application was filed ... to more truly reflect the points of diversion and to change certain points of diversion for more efficient handling of the water from the different sources.

"In addition three additional points of diversion were set forth on the upper tributaries of Strawberry Creek, and in addition applicant has applied for permission to install a steel tank to meet the demand during drought years.

"Strawberry Creek is a stream of very intermittent flow and in dry years many of the springs and tributaries which ordinarily feed the stream do not reach it. The result is that in many years, and especially in dry years, there is not sufficient water in portions of Strawberry Creek to support or keep alive any fish in it.

"The dam maintained by applicant, to which reference is made in the protest, has been maintained for many years, and in wet years sufficient water flows around the dam to support any fish which may have been planted in the stream, but in dry years even if there was no dam there would not be enough water to support any fish in the stream The applications and permits under which applicant now operates have been in force for many years and no fault has been found with them by protestants.

"Your attention is also called to the fact that the amount of water which applicant is seeking to obtain is practically

the same as under prior permits. The change of points of diversion makes no difference in the amount of water taken and the additional points of diversion are simply higher up the stream in order to obtain a more even and constant flow of water.

"The amount of water used to fill the steel tank is simply part of the same stream flow and would have no effect on the amount of water which might be available to support fish life in Strawberry Creek."

The applicant's answers to protests of Fruitvale Mutual Water Company, Lake Hemet Water Company, Fairview Land and Water Company and Idyllwild Water Company include the following statements:

"The springs and sources from which the Fern Valley Mutual Water Company desires to appropriate water are located approximately five miles distant from the points of diversion of protestants on the San Jacinto River and at a considerable elevation above the points of diversion of said protestants."

"Strawberry Creek does not flow continuously, and would not flow continuously in dry years even if no water was appropriated by applicant. Strawberry Creek, therefore, especially in dry years does not flow continuously so that the waters would flow into San Jacinto River. Between the points of diversion of applicant and the points of diversion of protestants there exists a large number of underground faults and it is the contention of many engineers that the underground waters from the region in which applicant seeks to take water do not reach or support the San Jacinto River, and that protestant will not be injured in any respect by the proposed diversion"

"The operations of the San Jacinto tunnel by the Metropolitan Water District ... tend to show that the surface waters of the region in which the waters which applicant seeks to appropriate are located flow northerly and parallel to the San Jacinto fault line and the San Jacinto River, and it is only the storm and heavy winter flows of water which break over the fault line after the lower basins are filled and thereby reach the points of diversion of protestant."

"None of the water which applicant desires to appropriate is used for irrigation but only for domestic purposes and a large part of said water so used ... is returned to the

ground ... and the area within which said water is so used is closer to the points of diversion of protestant and within the same watershed, and the loss thus occasioned by domestic use is very small and is probably made up by the fact that the water is transported to a closer point to the points of diversion of protestant than if said water sank into the ground around the points of diversion.

"It is doubtful ... if the underground water from the proposed sources of applicant in any degree reaches the points of diversion of protestant, and further, that protestant will not be injured in any degree by the manner of use of said water

"The said steel tank acts as a stabilizing unit and no extra water is diverted into said tank than if continuously used by applicant, and the water so stored in said tank would not in any degree tend to increase any flow of the water at the point of diversion of protestant."

Hearing Held in Accordance with the Water Code

Application 12340 was completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources and being protested was set for public hearing under the provisions of the California Administrative Code, Title 23, Waters, on Thursday, June 24, 1953, at ten o'clock a.m. in the Supervisors Hearing Chamber, Court House, Riverside, California. Of the hearing the applicant and the protestants were duly notified.

Gist of Proceedings at Hearing

The Examiner announced (page 4 of transcript) the withdrawal by Idyllwild Water Company, by letter dated February 23, 1952, of its protest against Application 12340.

Mr. Harold Conkling representing the applicant made an opening statement (pages 8 to 30 of transcript) in the course of which he stated (page 12 of transcript), among other things:

"Applicant ... would agree ... to divert to storage only when protestants are not diverting entire discharge of the stream or at those times when the flow from Strawberry Creek does not persist all the way from applicant's diversion to protestants' diversion on Strawberry Creek."

In the course of his discussion also Mr. Conkling stated (page 27 of transcript):

"I have drawn up amendments to Application 12340 and discussed them with the attorneys for protestants, and they have come to an agreement with me. I will read them into the record:

'In supplement to this application, under Paragraph 4, Items 3 and 4 are cancelled.

'In supplement to this application under the heading "General" Item 5 should read:

"Total diversion to be applied directly to beneficial use without storage from all sources named in this application and in Applications 8090, 8093, 8120, 8121, will not exceed 0.48 cubic feet per second, based upon average for the week of maximum demand; and the diversion from Strawberry Creek at points one and two as named in supplement to this application under Paragraph 4, will not exceed 0.20 cubic feet per second, and shall be a part of the 0.48 cubic feet per second average above defined."

'Under this application, diversion from Tahquitz Creek at point five as described in supplement to this application under Paragraph 4, will not exceed 0.28 cubic feet per second.'"

The protestants' representatives (Messrs. Haas, Bruce and Douglas) stipulated (page 28 of transcript) that the application may be amended as read by Mr. Conkling and the Examiner stated (page 29 of transcript):

"This amendment will be considered merely as an amendment to the application and we will proceed with the hearing as if ... that was the reading of the original application."

Witnesses next testified as follows:

William G. Dickinson testified (pages 30 to 35 of transcript) to the effect that he is president and principal stockholder of the Idyllwild Mountain Park Company which in turn owns a majority of the outstanding stock of the Fern Valley Mutual Water Company and that he is a director of the Fern Valley Mutual Water Company. He testified as to the contents of documents therewith introduced as applicant's Exhibits 2 and 3. Rollin R. Humber, president and manager of Fern Valley Water Company, testified (pages 36 to 94 of transcript) as to the contents of applicant's Exhibits 4, 5, 6, 7 and 8, as to the manner of operation of the Fern Valley Water Company system, the difficulties encountered, the inadequacy of storage. He testified to the effect that when the subdivision is fully settled about three times as much water will be required as at present, that present supply is not enough to meet present needs, that there are few lawns and gardens, that sewage is disposed of by septic tanks, that an estimated 90 per cent of water diverted returns to the ground, that at least 30 acre-feet of storage will be needed for ultimate requirements, that regulatory storage at present consists of a 42,000 gallon tank on

Tahquitz Creek and a 420,000 gallon tank on Strawberry Creek. He testified in detail as to how the storage requirement of 30 acre-feet was arrived at. He testified further that the 30 acre-feet would be stored in tanks of either steel or concrete, that it would take 23 or 24 steel tanks, that storage would be added later, gradually, depending on demand, that freezing weather ordinarily extends to the latter part of March.

Incident to cross examination of Witness Humber, Mr. Douglas stated that the Department of Fish and Game asks that 0.1 cubic foot per second be by-passed when water is being diverted to storage and Mr. Conkling stated "Well I am authorized by my applicants -- they have no objection to that so you won't have any objection to the application," to which Mr. Douglas replied, "That's all right then."

Following the testimony by Witness Humber, Attorney Haas made an unsworn statement (page 94 of transcript) as follows:

"... I'd better make a short statement for the record of our position here, subject to the approval of my clients.

"We see this case this way

"We believe, first, that 30 acre-feet is a fantastic quantity of water, when viewed in the light of the uses to which it will be put up there. We don't believe that the evidence, even remotely, tends to support an application to divert to storage 30 acre-feet of water.

"Now, diversion for storage on Strawberry Creek has been something which this Division has never favored. Lake Hemet itself has sought to divert to storage the waters of Strawberry Creek unsuccessfully, and this is back a long time ago. The water rights of the persons in the valley, which involve thousands of times the use that we are talking about here today, are in a very nice sense of balance and I think that's why you see

Mr. Bruce here from Fruitvale and ourselves.

"As the examiner must know, the water conditions down in that valley are just very highly balanced ... every drop of water means something ... it's just a succession of law suits, one person against the other, over every drop of water.

"Now, Mr. Conkling has said that they are prepared to limit their storage to a time when Strawberry is dry at our point of diversion and not to store when we are taking all of Strawberry. I think, as Mr. Conkling will see, if the case goes forward, that we start diverting the whole flow of Strawberry as it comes by our point of diversion very early in the year. This year, it was in April some time.

"The application, as it is now made seeks to divert from March through June -- but that won't be possible. It ... seems to me that ... before we start allowing people to store on Strawberry Creek there ought to be very good reasons for it, and I don't think that the evidence supports it in this case."

Attorney Haas' statement was followed by the following unsworn statement (pages 96 to 97 of transcript) by Mr. Conkling:

" ... I don't believe counsel understands the purpose of an application and the necessity ... of providing for the future.

"... the applicant is willing to take the water at a time very disadvantageous to him -- that is in the middle of winter when it is not being used by the Lake Hemet Water Company in any form, and divert it to his use, because it is desperately needed

"They did use three acre feet in 1951 ... and they'd have to provide for the future; and if they take water ... and it goes to Lake Elsinore or is evaporated on the thousands perhaps acres of cottonwoods down in the San Jacinto Valley, why, then, what good is it?

"Nobody's hurt by it. It's for the public's benefit. I don't see that we need to argue about what the use of it today is all we want to do is get the water that can be used tomorrow and the next day."

Mr. Conkling next took the witness stand (pages 97 to 118 of transcript) introduced applicant's Exhibits 9, 10, 11, 12 and testified in connection therewith, stating as his conclusion (page 104 of transcript):

"So, whatever decrease in the amount of water reaching this basin (indicating) caused by the extraction or the use of 30 acre-feet of storage by the Fern Valley Mutual Water Company, will cause only an infinitesimal greater depression of the water table in these droughts, and will -- and a greater amount of water will need to be used -- will be caught in those basins in the next excess period; and a little smaller amount of water will go down past the margin of the impervious strata.

"In other words, that's all the effect there can be; and that will be so infinitesimal that it can never be measured but will merely subtract from the waste that goes into Lake Elsinore.

Exhibits, introduced during the course of the hearing are as follows:

By applicant:

- 1 -- "Opening Statement by Conkling."
- 2 -- "Tabulation Showing Number of Lots Subdivided Each Year in Areas Served by Fern Valley Mutual Water Company with Cumulative Total."
- 3 -- "Plat Showing Portion of Twps. 5S R's 2 & 3 E, SBB&M"
- 4 -- "Fern Valley Water Supply -- Discharge at Sources in Southern California Miner's Inches."
- 5 -- "Total Average Monthly Demand (So. Calif. Miner's Inches)"
- 6 -- "Daily Meter Readings -- June 15 to Sept. 15 in Gallons -- 1952."

- 7 -- "Daily Demand as Measured by Meter Readings (gallons) 1951."
- 8 -- "Tabulation of Number of Unit Users of Fern Valley Mutual Water Co."
- 9 -- "Monthly Discharge, San Jacinto River near San Jacinto - Acre Feet."
- 10 -- "Monthly Discharge, San Jacinto River near Elsinore - Acre Feet."
- 11 -- Topographic Mapping Showing Diversion Points of Fern Valley Mutual Water Company, Lake Hemet Water Company and Fruitvale Mutual Water Company.
- 12 -- Graph "5S - 1E - 10D Canyon Sub-basin."
- 13 -- Graph "4S - 1E - 31B" and "4S - 1W - 15B."

By protestants:

- 1 -- "Map of Lake Hemet Water Co.'s System."
- 2 -- Certified Copy, Judgment in matter of Florida Water Company vs. Mary Webster et al., Superior Court, Riverside County, No. 169.
- 3 -- Copy of deed of September 1, 1905, conveying certain property of David G. Webster, et al. to W. F. Whittier.
- 4 -- Opinion dated June 22, 1908, by Craig, Collier and Collier, Attorneys, in re. demands of certain parties for water from Lake Hemet Canal.

Other Available Information

Filings other than Application 12340 that stand in the applicant's name are as follows:

Application 8090, Permit 4528 to appropriate 0.04 cubic foot per second year-round, from an unnamed spring (Birch Spring) at a point within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, T5S R3E, SBB&M.

Application 8093, Permit 4529 to appropriate 0.04 cubic foot per second, year-round, from an unnamed spring (Woods Spring) at a point within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8, T5S R3E.

Application 8120, Permit 4530 to appropriate 0.2 cubic foot per second, year-round, from Strawberry Creek at a point within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5, T5S R3E.

Application 8121, Permit 4531 to appropriate 0.2 cubic foot per second, year-round, from East Fork of Strawberry Creek at a point within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5, T5S R3E.

The protestant Fruitvale Mutual Water Company is authorized under Application 924 Permit 468 to divert 200 cubic feet per second between March 15 and October 15 from San Jacinto River and Indian Creek at points along a reach of San Jacinto River near San Jacinto, for agricultural and domestic purposes, the water to be spread and stored underground. The project is under current extension, for completion, to December 1, 1954.

Filings with the Division by Idyllwild Water Company are:

Application 9863, Permit 5643, License 3266 to appropriate not to exceed 40 acre feet per annum to be collected from about October 1 of each year to about June 1 of the succeeding year; diversion to be from Lilly Creek, tributary to Strawberry Creek at a point within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T5S R2E.

Application 10929, Permit 6380 to appropriate 0.2 cubic foot per second, year-round, and 13 acre feet per annum, collected between May 1 and November 1, from an unnamed creek (Little Tahquitz Creek) at a point within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5, T5S R3E.

A report of investigation made in connection with Application 10929 on May 15, 1952, states among other things:

"The source of the proposed diversion is locally known as Little Tahquitz Creek, a normally perennial stream draining about 1 square mile of westerly slope of San Jacinto Mountains. During years of normal or above normal precipitation the stream is perennial at the point of diversion but during periods that are subnormal late summer flow usually fails. Average annual precipitation over the watershed is about 30 inches of which a large portion is in the form of snow. Flow at the time of inspection was estimated at about 15 cubic feet per second."

Idyllwild Water Company also filed Application 9437 to appropriate 0.25 cubic foot per second, year-round, from Marion Creek, a tributary of Strawberry Creek, and Application 9465 to appropriate a total of 0.40 cubic foot per second, year-round, from Strawberry Creek and from Little Tahquitz Creek. Applications 9437 and 9465 were protested and after public hearing they were rejected and canceled. A passage from the decision rendered in the matter of Applications 9437 and 9465 is as follows:

"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 and necessary to serve existing recreational facilities."

The flow of San Jacinto River has been gaged by the United States Geological Survey at a point within the SE $\frac{1}{4}$ of Section 13, T5S R1E, since October 1920. The point of measurement scales about four miles downstream from the junction of Strawberry Creek with San Jacinto River. Monthly mean flows past the gaging station for three representative years, in cubic feet per second, are of record as follows:

<u>Month</u>	<u>1950-51</u>	<u>1944-45</u>	<u>1940-41</u>
October	0	0.08	0.179
November	0	21.8	0.439
December	0	3.12	42.1
January	0.05	1.61	21.7
February	0	53.5	73.5
March	0	88.7	316.
April	0.57	68.0	312.
May	0.20	11.3	124.
June	0	0	27.8
July	0.08	0	0.03
August	0	2.36	0.30
September	0	.43	0.123
Mean for year	0.07	20.6	76.5
Percent of normal	0.32	95.3	354.0

Amendment of the Application

Subsequent to the hearing of June 24, 1953 the applicant submitted an amended Application 12340 which embodied the changes agreed upon at the hearing and mentioned in the quotation on page 10, supra. The amended application was received on May 3, 1954 and supercedes the application as worded at the time of the hearing. Under the

amended application the applicant seeks as before to appropriate 0.40 cubic foot per second, year-round, and 30 acre-feet per annum collected between March 1 and June 30, but from the following sources only: an unnamed stream at a point within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 5, T5S R3E, SBB&M, an unnamed stream at another point within the same quarter-quarter section, and East Fork Strawberry Creek (Little Tahquitz Creek) at a point within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of the same Section 5. The amended application contains also a statement to the effect that total diversions for immediate use without storage under Applications 8090, 8093, 8120, 8121 and 12340 will not exceed 0.48 cubic foot per second, that the diversions from the unnamed streams will not exceed 0.20 cubic foot per second and that diversion from the East Fork of Strawberry Creek (Little Tahquitz Creek) will not exceed 0.28 cubic foot per second.

Discussion

Since Applications 8090, 8093, 8120 and 8128 initiated appropriations aggregating 0.48 cubic foot per second and these applications have been approved, the direct diversion feature of Application 12340 as now amended becomes in effect a petition to change the points of diversion under the applicant's prior approved applications, rather than the initiation of a new appropriation.

The protest by State Department of Fish and Game evidently may be adjusted by the inclusion in any permit issued of a clause providing for the bypassing by the applicant of 0.1 cubic foot per second or the natural flow of the stream, whichever is least, when

water is being diverted to storage. This follows from the request by Mr. Douglas, representing that agency, for said bypassing and the acquiescence thereto by Mr. Conkling on behalf of the applicant.

The protest by Idyllwild Water Company may be disregarded because of its withdrawal by letter of February 23, 1952.

The protest by Fruitvale Mutual Water Company is insufficiently supported by the evidence. That protestant's headworks scale roughly 10 miles downstream from the junction of Strawberry Creek with San Jacinto River, 17 miles downstream from the vicinity of the applicant's works, 6 miles downstream from the gaging station "San Jacinto River at San Jacinto." That protestant claims to utilize 9000 acre-feet each year. The watershed tributary to its headworks is considerably larger than the watershed above "San Jacinto River at San Jacinto" yet at the latter point, according to the Water Supply Papers, United States Geological Survey, runoff averages some 15,300 acre-feet per annum. Fruitvale Mutual Water Company's contention that the relatively small appropriation sought by the applicant, so far upstream, would affect it appreciably, is unconvincing.

The protests by Lake Hemet Water Company, Inc. and Fairview Land and Water Company, Inc. likewise are unsupported by evidence indicating that those companies would be affected appreciably by the appropriation that the applicant seeks. Those protestant companies' intakes are some 6 miles down Strawberry Creek from the scene of the

applicant's operations, the appropriation which the applicant seeks for direct diversion year-round represents no increases over appropriations initiated under the applicant's earlier applications, the applicant has agreed to limit its proposed diversions to storage to times when these protestants are not diverting the entire flow of the stream or to times when Strawberry Creek does not carry through to the protestants' intakes.

Summary and Conclusions

The applicant seeks to appropriate water from Strawberry Creek and/or tributaries thereof in the total amount of 0.40 cubic foot per second, year-round, and 30 acre-feet per annum, the latter to be collected between March 1 and June 30. The water is to be utilized for domestic purposes by stockholders within the applicant's service area.

The application is protested by the California Department of Fish and Game, Fruitvale Mutual Water Company, Lake Hemet Water Company, Inc. and Fairview Land and Water Company, Inc. The first named protestant represents that the proposed appropriation will be injurious to fish life, the other protestants allege that it will interfere with the exercise of their own prior rights.

The applicant holds four earlier, approved applications to appropriate a total of 0.48 cubic foot per second, year-round, from headwaters of Strawberry Creek at points that are either coincident with or in the same general locality as the points of diversion

specified in Application 12340. The applicant has agreed that direct diversions under the four earlier applications and Application 12340 will never exceed 0.48 cubic foot per second, that diversion from Strawberry Creek will not exceed 0.20 cubic foot per second and that diversion from East Fork (Little Tahquitz Creek) will not exceed 0.28 cubic foot per second.

The Department of Fish and Game indicates, through its representative at the hearing, that a flow of 0.1 cubic foot per second past each of the applicant's intakes when water is being diverted to storage will suffice for the maintenance of fish life. The applicant offers no objection to such bypassing.

The applicant's agreement to restrict its direct diversions to a total of 0.48 cubic foot per second safeguards all protestants from direct diversions by the applicant in excess of those already authorized.

As to the storage feature of Application 12340 the possibility of injury to the protestants appears to have been eliminated by the acceptance by the applicant of a limitation of storage under Application 12340 to times when protestants are not diverting the entire flow of Strawberry Creek or when the flow of Strawberry Creek does not persist all the way from the applicant's point of diversion to the protestants' intake on Strawberry Creek. The flow of the sources appears sufficient ordinarily to satisfy the storage feature of the application.

From the information summarized it is concluded that unappropriated water exists at times in the sources from which the applicant

seeks to appropriate, that such water may be taken and used beneficially in the manner proposed by the applicant without injury to downstream users and that the protests against the application are insufficient to warrant its denial. In view of the circumstances it is the opinion of this office that Application 12340 should be approved and permit issued, subject to the usual terms and conditions and subject also, for the protection of downstream interests, to special terms and conditions limiting direct diversion under the applicant's several applications to 0.48 cubic foot per second, limiting direct diversion from Strawberry Creek to 0.20 cubic foot per second, limiting direct diversions from East Fork Strawberry Creek to 0.28 cubic foot per second, limiting storage under Application 12340 to periods when protestants are not diverting the full flow of Strawberry Creek or when the flow of that stream does not persist to the protestants' point of diversion on that stream and further limiting diversion to storage to such amounts as will not reduce the flow past the point or points where such diversion is effected below 0.1 cubic foot per second.

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ORDER

Application 12340 for a permit 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 Application 12340 be approved and that a permit be issued to the applicant subject to such of the usual terms and conditions as may be appropriate and subject also to the following special terms and conditions, to wit:

Total diversion under Applications 8090, 8093, 8120, 8121 and 12340, except diversion to storage, shall not at one time exceed 0.48 cubic foot per second. Of this amount no more than 0.20 cubic foot per second shall be diverted from Strawberry Creek nor 0.28 cubic foot per second from the East Fork thereof.

Diversion to storage under Application 12340 shall be limited to times when Lake Hemet Water Company and Fairview Land and Water Company are **not** diverting the entire discharge of Strawberry Creek or to times when flow does not persist all the way from permittee's diversion on Strawberry Creek to those protestants' point of diversion on that stream.

When water is being diverted to storage permittee shall bypass a minimum of 0.1 cubic foot per second or the natural flow of the stream whenever it is less than 0.1 cubic foot per second at each of its points of diversion under Application 12340 to maintain fish life.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 2nd day of August, 1954.



A. D. Edmonston
A. D. Edmonston
State Engineer