

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

oOo

In the Matter of Application Number 2230 of Edward Cull for Agricultural and Domestic Purposes, 2354 of Alexander Mitchell for Agricultural purposes, 3712 of William Irwin for Domestic purposes, 4009 of Big Bear Realty Corporation for Domestic purposes, 4190 of L. J. Barber for Domestic purposes and 4461 of Big Bear Realty Corporation for Domestic purposes to appropriate water from certain springs tributary to Baldwin Lake Drainage Area.

--0--

DECISION NO. 2230, 2354, 3712, 4009, 4190 and 4461, D 86
Decided January 4, 1926.

--0--

APPEARANCES AT HEARING HELD FEBRUARY 9, 10, 1926

For Applicants:

Edward Cull
Alexander Mitchell
William Irwin
Big Bear Realty Corp.
L. J. Barber

L. G. King
In Propria persona
L. G. King
A. W. Davis of Mitchell, Silberg & Davis.
J. B. Haley, of Fickelson & Richardson

For Protestants:

C. C. Barker and Wm. Shay
L. J. Barber

Howard Surr, of Leonard, Surr and Kellyer.
J. B. Haley, of Fickelson & Richardson

Examiner:

Edward Hyatt, Jr., Chief of Division of
Water Rights.

O P I N I O N

The main features of the Applications are shown by the following table:

Appl. No.	Date Filed	Source	Amount	Purpose	Point of Diversion	Period of Diversion	Protestants.
2230:	2-26-21:	Spring	2.0 c.f.s.	Ag. & Dom.	NW $\frac{1}{2}$ NW $\frac{1}{2}$ Sec 31, T2N, R2E: S.B.M.	Apr. 1-Dec. 1	
2354:	5-24-21:	Spring at Fish Hatchery and Green Canyon Creek.	2.0 c.f.s.	Agr.	SE $\frac{1}{2}$ NE $\frac{1}{2}$ Sec 30, T2N, R2E: S.B.M.	Sept 1-May 30	Wm. Shay and C. O. Barker
3712:	11-10-23:	Lone Mountain Spring	0.20 c.f.s.	Domestic	NE $\frac{1}{2}$ NW $\frac{1}{2}$ Sec 31, T2N, R2E: S.B.B. & M.	Jan. 1-Dec 31	Wm. Shay and C. O. Barker
4009:	6-2-24 :	Spring	0.025 c.f.s.	Domestic	NW $\frac{1}{2}$ SW $\frac{1}{2}$ Sec 31, T2N, R2E: S.B.M.	Jan. 1-Dec. 31	Wm. Shay and C. O. Barker L. J. Barber
4190:	9-5-24 :	2 Springs	0.15 c.f.s.	Domestic	(1) SW $\frac{1}{2}$ SW $\frac{1}{2}$ Sec 31, T2N, R2E, S.B.M. (2) NE $\frac{1}{2}$ NW $\frac{1}{2}$ Sec 6, T1N, R2E, S.B.B.M.	Jan. 1-Dec. 31	Wm. Shay and C. O. Barker
4461:	2-14-25:	Spring	0.05 c.f.s.	Domestic	NW $\frac{1}{2}$ SW $\frac{1}{2}$ Sec 31, T2N, R 2E, S.B. & M.	Jan. 1- Dec 31	Wm. Shay and C. O. Barker L. J. Barber

* Also for one (1) day of 12 hours each week from May 30 to September 1 of each season.

2354

Applications Numbers 2230, 3712 and 4009 were completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights. Applications Numbers 2354, 3712 and 4009 being protested, were set for public hearing at Room 816, Pacific Finance Building, Los Angeles, California at 10:00 A.M. on

February 9, 1925. Although Application No. 2230 was not protested it was included in this hearing in order that the same could be ^{disposed of} cancelled in accordance with the Water Commission Act. Of this hearing applicants and protestants were duly notified.

Application Number 4190 was not protested prior to the hearing and Application Number 4461 was not filed until after the hearing, but it was stipulated at the hearing that these two applications would be included in the hearing for what testimony might be ^{relevant} revealing with the understanding that further hearing would be held upon applications of any of the record parties.

As the evidence presented at the hearing was somewhat indeterminate, a field inspection was made on July 7, 1925 by Mr. Harold Conkling, Hydraulic Engineer for the Division of Water Rights in company with Mr. Edward Hyatt, Jr., Chief of the Division.

Since the hearing certain agreements have been entered into between the applicants and protestants which will do away with the necessity of further hearing and applications Nos. 4190 and 4461 will be included in these findings.

The protest of Messrs. Shay and Barker was filed against application No. 2354 on December 19, 1921 and June 4, 1923, against application No. 3712 on June 29, 1924, and against Application No. 4190 on March 7, 1925.

Protestants allege in effect that a prior right of 125 inches from Green Canyon Creek was adjudicated to the protestants by the San Bernardino County Superior Court in Action No. 16318 and the remaining water to E. O. Voyles and that the protestants have since purchased all of the rights of Voyles and that therefore they have the right to the use of the entire flow of Green Canyon Creek; that the springs from which the several applicants propose to divert are feeders of said Green Canyon Creek and any water directed from these springs would diminish the flow in the Green Canyon Creek.

Applicant 3712, in answer to the above protest, alleges in effect that at no time has he ever known the waters from Lone Mountain

Spring to reach the Fish Hatchery Stream which is tributary to Green Canyon Creek.

The protest of L. J. Barber against Application No. 4009 was filed December 13, 1924. Protestant alleges in effect that an agreement had been entered into between the Big Bear Realty Corporation and himself whereby the Corporation agreed to furnish him a supply of water and that the granting of the application would render it impossible for them to meet the terms of the agreement; that the spring from which the applicant proposes to divert is the only one from which an adequate supply of water may be had for the tracts of land which he intends to supply, and that the flow from the spring is sufficient for both the needs of the applicant and himself and that therefore sufficient water should be allowed him under Application No. 4190 for his needs.

It was stipulated at the hearing that the protest of L. J. Barber against Application No. 4009 would appertain also to application No. 4461 of the Big Bear Realty Corporation.

By a decree of the Superior Court of San Bernardino County, dated December 19, 1917 and signed by J. W. Curtis, Judge., Messrs. Barker and Shay were declared the owners of the right to all of the waters of Green Canyon Creek to the extent of 125 miner's inches, measured under a four inch pressure, flowing at the intake of Barker and Shay's ditch, said intake being situate on the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 20, T 2 N, R 2 E, S.E.B. & M., and that all of the waters of the cienega commonly known as the Green Spot are a part of said Green Canyon Creek.

The right to the use of the remaining waters of Green Canyon Creek after the rights of Messrs. Barker and Shay had been fully satisfied were declared to be owned by E. O. Voyles.

On December 29, 1921 Messrs. Shay and Barker purchased all of the holdings of E. O. Voyles in Big Bear Valley with the appurtenances, thus acquiring all the water rights of E. O. Voyles, and by this means obtaining the right to the use of the entire flow of Green Canyon Creek.

The entire flow of Green Canyon Creek is used by Messrs. Barker and Shay for irrigation and domestic purposes and according to testimony presented at the hearing more water could be used if such were available.

The main question involved at the hearing was whether or not the springs from which the applicants propose to divert contribute to the supply of Green Spot Spring and Green Canyon Creek.

The Barker-Shay Ranch is located in Section 18, T 2 N, R 2 E, S. B. B. & M., directly south of and bordering upon Baldwin Lake. Through Section 18 and extending in a southwesterly direction from the lake lies a broad, flat swale which has been developed into a hay ranch upon which wild grain is grown. The land is irrigated by means of sub-irrigation; from springs rising on the ranch and from the waters of two springs which rise above the ranch, near the foothills known as Fish Hatchery Spring and Green Spot Spring. The waters from these two springs join into one stream forming Green Canyon Creek and are diverted at a point about 2,000 feet above the south line of the ranch. Much of the flow however, seeps into the ground between the point of efflux of the springs and the point of diversion.

The area furnishing water to maintain the springs and the general water supply to the Barker and Shay Ranch consists of the valley lands and the mountains and comprises about 7500 acres. This area includes the ranch itself and about 1460 acres which drain directly into Erwin Lake which lies to the south east of the ranch, which may contribute only an immaterial flow.

Exclusive of these two areas there are about 2600 acres of land below the Green Spot and 2900 acres of mountain land above. The supply to

the ranch is the deep percolation from the rains and melting snows on these 5500 acres. The deep percolation from the mountains travels underground, appearing only on the ground when an obstruction is met. It mingles finally with the percolation from the rainfall on the valley itself and both together form an underground reservoir from which the water issues in the form of springs or which approaches the surface so closely as to be evaporated from the moist lands. No doubt much of the water also finds its way to Baldwin Lake only to be lost by evaporation.

In the final merging of the water in the underground reservoir it is impossible to state whence any particular unit of water comes or whether it will again appear on the surface as a spring or will be evaporated either from lands kept moist by the underground reservoir or from Baldwin Lake.

Rainfall at Bear Lake Dam averages 34" annually. At the Barker-Shay Ranch it is considerably less but no records are available. A good growth of pine is found intermingled with sage brush and from the character of the soil and vegetation the rainfall of the vicinity of the ranch is estimated to be between 20" and 25" annually. Further south near the mountain tops it may be as much as at the Bear Lake dam. In general the average rainfall over the territory furnishing the water supply for the Barker-Shay Ranch may be assumed to be about 27" annually, or a total of 12,375 acre feet per annum, over the area contributing to the supply of the ranch.

Just how much of this rainfall is available for beneficial use on the Barker-Shay Ranch it is impossible to determine, but it is evident that the supply is large compared with the amount which might be obtained from the few springs in the higher watershed which contribute little if any to the supply of the Barker-Shay Ranch, and due to the remoteness of these springs from the place of use the water from these springs which is not lost by evaporation would probably travel so slowly through the ground that the

ground waters would again be replenished by another snowfall before they could reach the Barker and Shay Diversion.

Much of the time at the hearing was taken up with the discussion of the proposed diversion from Ladder Spring in Ladder Canyon.

The field inspection by Mr. Conkling, above referred to, disclosed the following facts:

Ladder Canyon is tributary on the surface to the low area in the valley adjacent to Baldwin Lake which comprises the irrigated portion of Barker-Shay Ranch. The water of the spring disappears a short distance below the point where it rises. A bedrock reef about 1/4 mile below the spring appears on the surface in the bottom of the canyon but no water was flowing over it at the time it was inspected.

Testimony was introduced by the applicant to show that the underground water of Ladder Canyon was deflected westward out of the immediate drainage area by the rock formation and did not reach the springs which supply the Barker-Shay Ranch.

It is only in rare cases that the underflow of a stream does not follow the approximate course of the surface flow. In the absence of positive proof to the contrary, it may be assumed that it does so follow. In the present case surface indications do not indicate such a departure from the normal, nor was convincing evidence of such departure brought out in the testimony given at the hearing. In the absence of such proof it must be concluded that Ladder Canyon is one of the several streams supplying an underground reservoir or series of underground reservoirs between the base of the mountains and the edge of Baldwin Lake.

The protestants introduced testimony to show that this underground water was directly tributary to the Greenspot and large spring from which the upper diversion of the Barker-Shay Ranch is made.

From surface indications there is no convincing proof that the underground waters of Ladder Canyon feed the Greenspot, but they would

appear to flow to the west of the Greenspot.

A very considerable part if not all of the present flow of Ladder Springs is evaporated by a dense growth of willows and by the moist land below the spring. The remainder, if any, sinking into the ground, probably goes into the general area of the irrigable portion of the Barker-Shay Ranch.

All the subsurface water from the hills mingles with the deep percolation from the lower areas. The water which gets back underground from Ladder Spring, if any, may in part come to the surface at springs on the Ranch or be disposed of by evaporation from the low swampy lands bordering the lake. Diminution of the supply to Green-spot or other springs supplying the ranch by diversion of the total flow of the spring would appear to be negligible because a large part if not all of the flow is evaporated before the water sinks into the ground below the spring. No water being apparent at the rock reef below Ladder Spring, would indicate very small, if any, flow past this point at the time of inspection, as to pass this point water would have to filter below or through the dike. Normally it would not do this but would come over the dike. Therefore, it was questionable if any water was present at this point when the inspection was made, but any water so passing will, over a period of years, be wastefully evaporated.

Application No. 2230 was filed by Edward Cull on February 26, 1921. It proposes a diversion of 2.0 cubic feet per second from Lone Mountain Spring situated in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 31, T 2 N, R 2 E, S.B.S. & M.

Under date of October 24, 1923 Mr. Cull informed the Division that he no longer held any claim to applications Numbers 2230 and 2354 as he had sold his homestead to Mr. Alexander Mitchell. He also stated that Mr. Mitchell had not asked him for an assignment to the water applications.

Mr. Mitchell was then informed by this office that if he wished to proceed with applications Numbers 2230 and 2354 he should obtain an assignment from Mr. Cull.

On January 28, 1924 a signed statement by Mr. Cull was filed in this office, assigning application No. 2354 to Alexander Mitchell. The statement originally included the application No. 2230 but this application number had been cancelled by Mr. Cull when he signed the assignment which would appear to show the intent of Mr. Cull to assign application No. 2354 only.

At the hearing Application No. 2230 still remained in the name of Mr. Cull and thirty (30) days were allowed to clear up the title to Application No. 2230.

On February 25, 1925 an assignment of Application No. 2230 from Edward Cull to William Erwin was filed with the Division.

Subsequent to the filing of application No. 2230 Mr. William Erwin filed application No. 3712 on the same spring for 0.20 cubic feet per second.

Under date of July 8, 1925 this office received a statement from Messrs. Barker and Shay setting forth the fact that in consideration of certain rights being granted to them by William Erwin, they had entered into an agreement wherein William Erwin might divert a quantity of water not to exceed two and one-half miner's inches measured under a four inch pressure without any right to cumulate said water.

In view of the above there appears to be no reason why application No. 2230 should not be rejected and application No. 3712 be approved for 0.05 cubic feet per second provided that the maximum quantity of water diverted should at all times be limited to that amount.

Application No. 2354 proposes a diversion of 2.0 cubic feet per second from a spring at Fish Hatchery and Green Canyon Creek. This spring is directly tributary to the flow in Green Canyon Creek, all of which flow

is appropriated by Messrs. Barker and Shay by court adjudication, and since there is no unappropriated water, the Division of Water Rights has no authority to approve the application.

Applications Numbers 4009 and 4461 propose to divert water from a spring situate in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 31, T 2 N, R 2 E, S.B.P. & M., designated at the hearing as Ladder Spring.

Under date of November 12, 1925 the attorneys for the applicant "Big Bear Realty Corporation" filed with this office a copy of a signed statement by Messrs. Barker and Shay whereby they consented to the applicants being permitted to divert from said spring a quantity of water not to exceed at any time one miner's inch in volume, said inch being equivalent to one-fortieth of a cubic foot of water per second, and withdrawing their protest upon the condition that the quantity of water to be taken by the applicant from said spring shall at all times be limited to that amount. This concession on the part of the protestants was on the understanding that application No. 4461 be denied according to a letter received at this office on November 12, 1925 and signed by the attorneys for the protestants. It is the understanding of this office that the applicant has accepted the terms of the agreement.

There appears to be no reason therefore why application No. 4461 should not be rejected and application No. 4009 be approved for 0.025 cubic feet per second provided that the maximum amount of water diverted at all times be limited to that amount.

Since the hearing the applicant Mr. L. J. Barber has died and under date of October 13th, 1925, this office was advised by the administrator of his estate, Mr. W. S. Lower, that the development of the springs under application No. 4190 would be impractical and as long as he was handling the estate no development would be done on the springs covered by application No. 4190 as the expense would be prohibitive were they given the

permit by the Division. He stated also that he believed that sufficient water for the tract which it is proposed to serve has been obtained from another source,--namely,--"Lost Spring", which lies south of their land and which has been used since opening the tract.

For the reasons set forth in this letter there appears to be no reason why application No. 4190 should not be rejected.

ORDER

Applications Numbers 2230, 2354, 3712, 4009, 4190 and 4461 for permits to appropriate water having been filed with the Division of Water Rights as above stated, protests having been filed, a public hearing having been held and the Division of Water Rights now being fully informed in the premises,

IT IS HEREBY ORDERED that said Applications Numbers 2230, 2354, 4190 and 4461 be rejected and cancelled upon the records of this office.

IT IS FURTHER ORDERED that the said Application No. 3712 be approved for 0.05 cubic foot per second and a permit be issued subject to the usual terms and conditions, and that the said Application No. 4009 be approved for 0.02 cubic foot per second and a permit be issued subject to the usual terms and conditions, except that the rotation clause will be omitted.

Dated at Sacramento, California, this 4th day of January,
1926.

EDWARD HYATT, JR.

(Edward Hyatt, Jr.)

CHIEF OF DIVISION OF WATER RIGHTS.
DEPARTMENT OF PUBLIC WORKS.
SACRAMENTO, CALIFORNIA.