

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 18537
of Malibu Lakeside Mutual Water Company
to appropriate from Triunfo Creek
(Underflow) in Los Angeles County

Decision No. D 985

ADOPTED NOV 22 '60

DECISION APPROVING APPLICATION

Application 18537 was filed by Malibu Lakeside Mutual Water Company on February 18, 1959. It requests a permit to appropriate 0.15 cubic foot per second of unappropriated water, year-round, from Triunfo Creek (underflow) in Los Angeles County for domestic and recreational purposes. The application states that the company now serves water to 82 metered services and one community swimming pool, and that the amount of water requested to be appropriated in the new permit would be sufficient for service to 155 residences.

Notice of the application having been posted, protests were received from Malibu Lake Mountain Club, Ltd. (herein referred to as the Mountain Club) and Mildred E. Bates. A public hearing was held in Los Angeles on March 2, 1960, before Kent Silverthorne, Chairman of the State Water Rights Board. Appearances were made by applicant and both protestants, and all parties introduced evidence.

Application 18537 requests a supply of water supplementary to that of License 5737 (Application 4040), for diversion from the same well now being used by applicant and for use on its presently authorized place of use. The license inspection which preceded issuance of License 5737 indicated that applicant was already using water somewhat in excess of its authorized amount under Application 4040.

Applicant's well is located in the bed of Triunfo Creek, about 0.25 mile upstream and westerly from the west end of Malibu Lake. The well consists of a large concrete box with weep holes, set down in the creek bed about 20 feet. Applicant does have one other well in another location, but its water quality is too poor for use except in an emergency.

Protestant Mildred Bates owns property adjacent to and upstream from the lot where applicant's well is located on Triunfo Creek. Protestant Bates is not using water at present but is concerned lest she lose a riparian right by prescription. However, "prescription does not run upstream." See Hutchins, California Law of Water Rights, page 326. Accordingly, this protest may be disregarded.

Downstream from applicant's well in the bed of Triunfo Creek are two wells of the Mountain Club. One is nearly 200 feet deep and the other is about twice as deep. They are used for domestic purposes at the club and the many cabins leased by the club to its members. Further downstream is Malibu Lake itself, formed by a storage dam built by protestant Mountain Club below the junction where Triunfo Creek and Medea Creek become Malibu Creek. The lake originally had a capacity of about 1,000 acre-feet, but because of silting, its present capacity is about 725 acre-feet. Its present surface covers about 150 acres. The dam is 35 feet high and 200 feet long. The lake is used by the Mountain Club for recreational purposes, and there is a close correlation between the level of water in the lake and the level of water in the upstream wells.

The testimony of witnesses for the applicant indicates that the surface flow in Triunfo Creek tends to dry up during July and August in most years. Actually, the prime source of water for the applicant and the Mountain Club is the subsurface or underflow of Triunfo Creek (RT 31, 32). Further, the

level of the water in the applicant's well is directly affected by the water level of Malibu Lake (RT 10, 12, 32, 77 and 78), and there is insufficient water for pumping by applicant from its relatively shallow well when the level of the lake is low. The lake is sustained by both surface and subsurface flow (RT 20, 60) and overflows almost every year during flood flows (RT 8, 58, 72, 76). No testimony concerning the operation of Malibu Lake was given by the Mountain Club.

An inspection of the project which preceded issuance of License 4907, (Application 3051) to Malibu Lake Mountain Club was made on June 21, 1956, at which time about one cubic foot of water per second was flowing over the spillway. The inspection report contains an estimate of the subsurface inflow to Malibu Lake. It was estimated that annual evaporation losses amount to about five feet in this area, but in most years the level of the lake lowers only about one and one-half feet. Considering evaporation from the lake and subsurface replenishment it was estimated that the subsurface inflow reaching Malibu Lake was in the order of 525 acre-feet per annum; which would average about 0.72 cubic foot per second on a continuous flow basis. This is in addition to the surface flow of the stream. Of this subsurface and surface flow, Mountain Club has a right under License 4907 (Application 3051) to 200 acre-feet per annum by storage to be collected between January 1 and April 1 of each year. (License 4907 also authorizes a direct diversion of 0.25 cubic foot per second, year-round, for domestic purposes from Triunfo Creek upstream from Malibu Lake. No evidence was introduced indicating subsurface inflow into Malibu Lake from any source other than Triunfo Creek.

The Mountain Club also claims a riparian right. However, the riparian right does not authorize holdover storage from the wet season for use in the

dry season (Colorado Power Co. v. P.G.&E. Co., 218 Calif. 559, 24 Pac. (2d) 495 (1933)). Nor does a riparian right authorize storage of water behind a dam for recreational or other purposes without making provision for the release of water. During the summer months when there is no spill over its dam, the Mountain Club does not release water downstream. Accordingly, the Mountain Club's storage of water behind its dam is based solely on its appropriative rights. Since the underflow into Malibu Lake exceeds the appropriative rights of the Mountain Club, there is unappropriated water available at the proposed point of diversion, sufficient to justify approval of the subject application.

The major portion of the water sought under the subject application is to cover a projected increase in use to the year 1970. As of 1958 the use of water by the applicant was only 0.062 cubic foot per second of which 0.045 cubic foot per second is covered under License 5737. Therefore, only about 10 per cent of the water to be appropriated under the application is in use. The Mountain Club requested that any permit issued to the applicant be limited to an amount sufficient for a projected five-year period of development. It is not in the public interest to issue permits for an excessive amount of water over what is now needed unless the period of development is relatively short. A clause will therefore be included in the permit calling for notice to the Mountain Club prior to the Board taking action upon any petition for an extension of time for construction work or complete application of water to beneficial use beyond an authorized initial period of five years.

The evidence indicates, and the Board finds, that there is unappropriated water available for use by the applicant without injury to any water users under prior vested rights. The intended use is beneficial.

IT IS HEREBY ORDERED that Application 18537 be, and the same is, approved, and that a permit be issued to the applicant subject to vested rights and to the following terms and conditions:

1. The amount of water to be appropriated shall be limited to the amount which can be beneficially used and shall not exceed 0.15 cubic foot per second to be diverted between January 1 and December 31 of each year.

2. The maximum amount herein stated may be reduced in the license if investigation warrants.

3. Construction work shall be completed on or before December 1, 1963.

4. Complete application of the water to the proposed use shall be made on or before December 1, 1965.

5. The time allowed for completion of construction work and complete application of water to beneficial use under this permit shall not be extended without prior notice to Malibou Lake Mountain Club, Ltd.

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

7. All rights and privileges under this permit, including method of diversion, method of use, and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on the ____ day of _____, 1960.

Kent Silverthorne, Chairman

W. P. Rowe, Member

Ralph J. McGill, Member

