

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

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In the Matter of Applications 1423 and 4486 of the Vail Company to  
Appropriate from Santa Margarita River and Temecula Creek in  
Riverside County for Agricultural and Domestic Purposes

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Decision A. 1423, 4486 D. 500

Decided *February 23, 1943*

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APPEARANCES AT HEARING HELD AT OCEANSIDE ON SEPTEMBER 2, 1926

For Applicant

The Vail Company

Walter F. Haas

For Protestants

Rancho Santa Margarita

T. B. Cosgrove

Fallbrook Irrigation District

Dempster McKee

For Certain Interested Parties

Guy Bogart )  
Murray Schloss )  
Otto Witchner )  
Robert De Luc )

Walter Gould Lincoln

Examiner

Edward Hyatt, Jr., Chief of the Division of Water Rights, Department  
of Public Works, State of California

General Description of Proposed Projects

Application 1423 was filed on September 2, 1919, by Margaret R.  
Vail, N.R. Vail, Mary E. Vail, Mahlon Vail and William Banning Vail, Trustees,  
operating as Vail Company. It proposes an appropriation of 40,000 acre-feet

per annum of the waters of Temecula Creek, tributary to Santa Margarita River in Riverside County to be stored in the Pauba Reservoir (to be constructed to a capacity of 41,140 acre-feet) at the junction of Arroyo Seco and Temecula Creek. The dam is within the NW $\frac{1}{4}$  of projected Section 10, T 8S, R 1 W, S.B.B.M. The water so stored will subsequently be released and used for agricultural and domestic purposes within the Pauba, Temecula and Little Temecula Ranchos as shown upon a map filed in support of the application. It is proposed to irrigate 15,000 acres from about March 1 to December 1 of each season.

Application 4486 was filed on February 28, 1926 by N. R. Vail, as trustee for and on behalf of Vail Company. It proposes an appropriation of 4.76 cubic feet per second by direct diversion from April 1 to November 15 of each season and 2700 acre-feet per annum to be collected to storage from November 30 to April 1 of each season. The source of the proposed appropriation is the Santa Margarita River (or Temecula Canyon) in Riverside County. It is proposed to use the water for irrigation, domestic and stockwatering purposes. It is proposed to store the 2700 acre-feet in Reservoir A or Temecula Reservoir (capacity 1710 A.F.) to be constructed at the junction of Murietta Creek and Temecula Creek within the Temecula Rancho and in Reservoir B or Walker Basin Reservoir (capacity 3181 A.F.) Offstream storage in the Walker Basin Reservoir will be diverted at a rate not to exceed 10 cubic feet per second. Applicant's proposed point of diversion is at the Temecula Reservoir dam site within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of projected Section 24, T 8 S, R 3 W, S.B.B.M. The place of use consists of 3000 acres within the Temecula and Santa Rosa Ranchos. The irrigation season is described as being from about April 1 to about November 30 of each season.

### Protests

The only protests filed against the approval of Application 1423 were filed by Jerome O'Neil, co-owner with James L. Flood of the Rancho Santa Margarita y las Flores and by the Committee for the organization of the Fallbrook Irrigation District. At the hearing these protestants entered appearances as the "Rancho Santa Margarita" and the "Fallbrook Irrigation District". Appearances were also entered by other interested parties but no actual protests were filed.

Prior to the hearing Application 4486 had not been completed and therefore was not advertised. It may be assumed, however, that the protests against the approval of Application 1423 are also directed against the approval of Application 4486.

The Rancho Santa Margarita claims that it is riparian to the Santa Margarita River and alleges in effect that should Application 1423 be approved it would result in interference with its prior vested rights and future use.

The Fallbrook Irrigation District filed Application 3846 with the Division for the appropriation of water from the Santa Margarita River for use (as set forth in its protest) on one of the most prosperous citrus growing sections of Southern California and alleges in effect that it would be against the public welfare to approve Application 1423 which was filed for the purpose of appropriating water for private use.

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

Application 1423 was completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Rights

and being protested was set for public hearing at Oceanside, on Thursday, September 2, 1926 at 10:00 o'clock A.M. Although Application 4486 had not been completed and advertised it was also included for hearing at the same time. Of this hearing applicant and protestants were duly notified.

#### General Discussion

As our action in this matter is not based upon whether or not there is sufficient unappropriated water in Santa Margarita River and its tributaries to justify the approval of the applications but rather upon the ability of the applicant to proceed with the proposed developments, no purpose can be served by discussing the protests. Suffice it to say that subsequent to the hearing held at Oceanside on Thursday September 2, 1926 which not only included Applications 1423 and 4486 of the Vail Company but also Application 3846 of Fallbrook Irrigation District, Applications 4543 and 4550 of Murray Schloss and Application 4688 of Philip Playter, all applications except those of the Vail Company have been cancelled at the request of the applicants, their proposed developments having been abandoned.

Little or nothing was accomplished at the hearing and it was adjourned sine die with the understanding that an effort would be made by the parties at interest to compose their differences and to this end would investigate the proposed developments and exchange physical data which might be helpful in arriving at a definite conclusion. It was also the consensus of opinion of those present at the hearing that action should be withheld pending the termination of the litigation between the Rancho Santa Margarita and the Vail interests such litigation having been commenced by a suit filed in August 1924 by the Rancho Santa Margarita to enjoin the applicant from taking water from the Santa Margarita River.

The celebrated case of Rancho Santa Margarita v. Vail et al which occupied 444 court days was finally settled by stipulation in 1941 and a summary of the stipulated judgment dividing the waters of the Temecula-Santa Margarita River between the parties involved in the litigation was filed with this office on August 6, 1941.

Although the differences between the Rancho Santa Margarita and the Vail Company were settled by the stipulated judgment and the proposed development on the Santa Margarita River has been abandoned by the Fallbrook Irrigation District, the protests are still pending before this office in spite of the fact that applicant has been urged by the Division to make every effort to obtain the withdrawal of the protests if it intended to proceed with its applications.

There are several reasons why applicant has not shown any inclination to proceed:

- (1) The investigation by the U.S. Engineers of the possibility of flood control work on the Santa Margarita River and its tributaries.
- (2) The possibility of the acquisition of the Vail properties for defense purposes by the U.S. Army.
- (3) The inclusion of the Pauba dam site covered by Application 1423 in the plans of the Metropolitan Water District for supplying San Diego County and City with water from the west portal of the San Jacinto Tunnel.
- (4) The impossibility of building the projects due to priorities.

On March 27, 1942, applicant again directed our attention to the fact that the U.S. Army was contemplating the purchase of its entire ranch for use as an artillery range and that if the ranch was sold the projects proposed under its Applications 1423 and 4486 would be abandoned. Action

by the Division was withheld until July 1 when applicant's attention was again directed to the necessity of either obtaining the withdrawal of the protests or withdrawing its applications if it was not in a position to proceed. No reply to our letter of July 1 has been received which leads us to believe that applicant is not in a position to proceed with construction work and utilization of the water even though the applications were approved.

To allow these applications to remain in statu quo for another long period of time would not be in the public interest and it is therefore the opinion of the Division that Applications 1423 and 4486 should be cancelled upon the records of this office.

ORDER

Applications 1423 and 4486 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 Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 1423 and 4486 be rejected and cancelled 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 23 day of Feb. 1943.

EDWARD HYATT, State Engineer

By Harold Conkling  
Deputy State Engineer

