

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

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IN THE MATTER OF APPLICATION NUMBER 3538 and NUMBER 3539  
OF K. T. HOWE TO APPROPRIATE WATER FROM UVAS CREEK IN  
SANTA CLARA COUNTY FOR MINING, IRRIGATION and DOMESTIC  
PURPOSES

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DECISION NO. 3538 - 3539 D45

Decided March 17, 1925

APPEARANCES AT HEARING HELD February 5, 1925

For Applicant	None
For Protestant	None
Examiner	Edward Hyatt, Jr., Chief of Division of Water Rights

O P I N I O N

These two applications are for appropriations of water from Uvas Creek to be used by K. T. Howe for mining and agricultural purposes on the same land.

The main features of the applications are as follows:

Both applications were filed July 19, 1923. Application 3538 proposes the appropriation of 3 second feet for quicksilver mining and Number 3539 proposes the appropriation of 0.56 second feet for agricultural use on 45 acres of land within the boundaries of applicant's mining claims. Both applications are protested by Minnie A. Kell.

These applications were completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights and being protested were set for a public hearing at Room 707 Forum Building at 10:00 o'clock a.m. on February 5, 1925. Of this hearing applicant and protestant were duly notified, but no appearance was made on behalf of either party nor has reason for such non-appearance been submitted.

The protest of Minnie A. Kell was filed December 12, 1923. It is based on her rights under application Number 3323, permit Number 1736 for 0.98 second foot for agricultural use some 8 miles downstream and is against diversion from the source at any time where such diversion would render the flow insufficient to satisfy her prior application and permit. While protestant stated in her protest that there were times when there was no surplus available to the applicant she has failed to show conclusively that there is any regularity or certainty as to the season of unappropriated water.

Consultation of available maps shows that between the points of diversion by applicant and protestant there are several accretions to the source and that the watershed area tributary to applicant's point of diversion is roughly only about 1/7 th of the area tributary to protestants point of diversion. Measurements made by an engineer of the Division of Water Rights, in connection with application Number 1267 show that on April 30, 1921, there was over 9 second feet flowing in the source well below the protestants diversion and also below a diversion by the City of Gilroy at a time when the city's conduit was diverting to capacity.

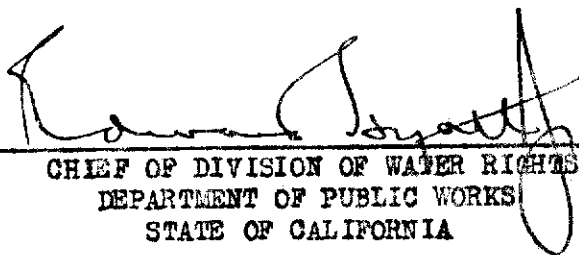
It is accordingly manifest that so far as protestant is concerned there has been at one time and probably at many others--in excess of 8 second feet in the source which is subject to appropriation. It is therefore found that conditions prerequisite to issuance of permits on these applications obtain.

ORDER

Applications Numbers 3538 and 3539 for permits to appropriate water having been filed with the Division of Water Rights as above stated, protests having been filed, opportunity for appearances at a public hearing having been accorded parties at interest and the Division of Water Rights now being fully informed in the premises

IT IS HEREBY ORDERED that applications Numbers 3538 and 3539 be approved and that permits be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento, this 17th day of March,  
1925.

  
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CHIEF OF DIVISION OF WATER RIGHTS  
DEPARTMENT OF PUBLIC WORKS  
STATE OF CALIFORNIA

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