

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

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In the Matter of Application 3335, Permit 1544 of  
John Lee and O. G. Kibbe to appropriate from  
South Fork of Esperanza Creek, a tributary  
of Calaveras River, Calaveras County  
for Irrigation and Domestic Purposes.

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DECISION A. 3335 D 231

Decided

*June 17, 1929*  
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APPEARANCES AT HEARING HELD AT Sacramento, California, May 17, 1928.

For Permittees

None

EXAMINER: Harold Conkling, Chief of Division of Water Rights.

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O P I N I O N

On October 30, 1923, Permit 1544 was issued to Sanford Anthony Thomas in approval of Application 3335 allowing the appropriation, subject to vested rights, of 0.18 cubic foot per second from South Fork of Esperanza Creek, a tributary of Calaveras River in Calaveras County, for irrigation of 15 acres and domestic uses. The permit prescribed that construction should begin on or before May 1, 1924, should thereafter be prosecuted with reasonable diligence and completed on or before August 1, 1925, and that the water should be completely applied to beneficial use on or before August 1, 1926, and if such construction was not so commenced, prosecuted and completed and the water so put to complete beneficial use permit might be revoked.

The project was inspected by an engineer of this office on August 27, 1926 and his report indicated that some \$300 have been spent on the pro-

ject, that construction was then fifty per cent complete with a maximum diversion capacity of 1.1 cubic feet per second, that some 4 acres had been irrigated, and that it was planned to extend the diversion system and irrigate additional land. Upon receipt of this report and in conformity with usual practice an extension of time was allowed permittee until December 1, 1928, within which to complete construction and use.

Thereafter (on February 10, 1928) the Division was notified by the permittee of record (Sanford Anthony Thomas) that he had assigned the NE $\frac{1}{4}$  SW $\frac{1}{4}$  NW $\frac{1}{4}$  Section 15, T 5 N, R 13 E, M.D.B. & M. together with certain other parcels of land "with water to irrigate 10 acres" to John Lee of Stockton, California, and that he had assigned the W $\frac{3}{4}$  SW $\frac{1}{4}$  NW $\frac{1}{4}$  of said Section 15 together with other parcels of land without any mention of water to an E. E. Voll who had in turn sold the same to O. G. Kibbe of 129 West Flora Street, Stockton. The two parcels of land described are included within the area to be served under this application and permit. Later Mr. Thomas further cleared up the matter of assignment by advising that he had assigned 2/3 of his interest in Application 3335, Permit 1544 to Mr. Lee, and 1/3 to Mr. Kibbe.

There followed during the year 1928 and until April 1929 a chain of correspondence between Mr. Lee and the Division by which the Division was led to the tentative conclusion that nothing was being done under the permit and that permittees had no present intention of prosecuting the project to completion. The matter was therefore set for hearing on May 17, 1929 at which permittees were required to show cause if any existed why the permit should not be revoked because of failure to comply with the terms and conditions thereof.

To this notice of hearing Mr. Lee replied under date of April 26, 1929 that he had not previously understood the situation, that he had in fact

not abandoned the project, that he was working upon it and desired additional time, but that he was not financially able to either come or send a representative to the hearing. Mr. Lee was thereupon advised that in view of the explanation given by him an extension would be allowed to him within which to complete his portion of the project.

Efforts to secure the cooperation of Mr. Kibbe in the matter have failed. He has failed to reply to letters concerning the permit and did not acknowledge receipt of the notice of the hearing other than by acceptance of the registry delivery card. And he neither appeared at the hearing nor attempted to show cause for not so appearing.

#### CONCLUSION

It is the conclusion of this office that while Mr. Lee has protected the priority of this appropriation under this application and permit insofar as it relates to the use of water upon 10 acres in the NE $\frac{1}{4}$  SW $\frac{1}{4}$  NW $\frac{1}{4}$  Section 15, T 5 N, R 13 E, M.D.B. & M., all rights under the permit insofar as they relate to the irrigation of 5 acres in the W $\frac{1}{2}$  SW $\frac{1}{4}$  NW $\frac{1}{4}$  of said Section 15 by O. G. Kibbe have been forfeited and that an order should be entered eliminating from the permit the right to use water upon said W $\frac{1}{2}$  SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 15 and striking from the records of the Division the name of O. G. Kibbe as a party in interest.

#### ORDER

It appearing to the Division of Water Rights that permittees have failed to comply with the terms and conditions of Permit 1544 heretofore issued upon Application 3335, a public hearing having been set and held in accordance with the provisions of Section 20, Chapter 586 Statutes 1913 as amended, and the Division of Water Rights now being fully advised in the premises:

IT IS HEREBY ORDERED that the name of O. G. Kibbe be dropped from the records of this office as one of the parties in interest in Application 3335, Permit 1544, and that reference to the west half of the southwest quarter of the northwest quarter ( $W\frac{1}{2}$  SW $\frac{1}{4}$  NW $\frac{1}{4}$ ) Section 15, T 5 N, R 13 E, M.D.B. & M. be stricken from said application and permit as a portion of the place of use, and

IT IS HEREBY FURTHER ORDERED that a reasonable extension of time be allowed to complete construction ~~and~~ and the beneficial use of 0.12 cubic foot per second under said application and permit.

Dated at Sacramento, California, this 17 day of June, 1929.

Harold Conkling  
(Harold Conkling)  
CHIEF OF DIVISION OF WATER RIGHTS

ENB:MP

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