

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

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In the Matter of Application 6285 of Edward S. Moore and Santa Lucia Corporation, Ltd., to appropriate from West Fork of Lime Kiln Creek, an Unnamed Stream, Vicente Creek, South Fork Big Creek, North Fork of South Fork of Big Creek, North Fork of Big Creek, South Branch of Rat Creek, Big Creek, and numerous Unnamed Springs in Monterey County for Subdivisional Purposes including Domestic and Recreational Uses and In the Matter of Application 6570 of Edward S. Moore and Santa Lucia Corporation, Ltd., to appropriate from West Fork of Lime Kiln Creek, South Fork of Big Creek and North Fork of Big Creek in Monterey County For Irrigation and Domestic Purposes.

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DECISION A. 6285, 6570 D 318

Decided

*May 9, 1932*

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APPEARANCES AT HEARING HELD AT SAN FRANCISCO, MARCH 26, 1932

For Applicants

Edward S. Moore and  
Santa Lucia Corporation, Ltd.

William A. Boekel

For Protestant

Henry Cowell Lime and Cement Company

Max Thelan

**EXAMINER:** Everett N. Bryan, Supervising Hydraulic Engineer for Harold Conkling, Deputy in Charge of Water Rights, Division of Water Resources, Department of Public Works, State of California.

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O P I N I O N

GENERAL FEATURES OF APPLICATIONS

Application 6285 was filed on May 10, 1929. It proposes appropriations as follows:

Source	Amount in cubic feet per second	Point of Diversion within
West Fork Lime Kiln Creek	1.0	SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 9, T 22 S, R 4 E
Springs 1)		(SE $\frac{1}{4}$ of SE $\frac{1}{4}$ " " " " " "
2)	0.3	(SE $\frac{1}{4}$ of SE $\frac{1}{4}$ " " " " " "
3)		(NW $\frac{1}{4}$ of SW $\frac{1}{4}$ " " " " " "
Unnamed Stream	0.5	NE $\frac{1}{4}$ of SW $\frac{1}{4}$ " " " " " "
Springs 4)		(NE $\frac{1}{4}$ of SE $\frac{1}{4}$ " Sec. 8 " " " "
5)		(SW $\frac{1}{4}$ of SE $\frac{1}{4}$ " " " " " "
6)	0.5	(NE $\frac{1}{4}$ of SW $\frac{1}{4}$ " " " " " "
7)		(NE $\frac{1}{4}$ of SW $\frac{1}{4}$ " " " " " "
Springs 8)		(SE $\frac{1}{4}$ of NE $\frac{1}{4}$ " Sec. 7 " " " "
9)	0.2	(NW $\frac{1}{4}$ of NE $\frac{1}{4}$ " " " " " "
Spring 10	0.2	SW $\frac{1}{4}$ of NE $\frac{1}{4}$ " Sec. 6 " " " "
Spring 11	0.2	SE $\frac{1}{4}$ of NE $\frac{1}{4}$ " " " " " "
San Vicente Creek	1.0	SW $\frac{1}{4}$ of NW $\frac{1}{4}$ " Sec. 5 " " " "
Spring 12)		(NE $\frac{1}{4}$ of NE $\frac{1}{4}$ " Sec. 6 " " " "
13)		(NW $\frac{1}{4}$ of NE $\frac{1}{4}$ " " " " " "
14)		(NW $\frac{1}{4}$ of NE $\frac{1}{4}$ " " " " " "
15)	0.3	(NW $\frac{1}{4}$ of NE $\frac{1}{4}$ " " " " " "
16)		(NE $\frac{1}{4}$ of NW $\frac{1}{4}$ " " " " " "
17)		(NE $\frac{1}{4}$ of NW $\frac{1}{4}$ " " " " " "
18)		(NW $\frac{1}{4}$ of NW $\frac{1}{4}$ " " " " " "
Spring 19)		(SE $\frac{1}{4}$ of SE $\frac{1}{4}$ " Sec. 36, T 21 S, R 3 E
20)		(NE $\frac{1}{4}$ of SW $\frac{1}{4}$ " " " " " "
21)	0.5	(NE $\frac{1}{4}$ of SE $\frac{1}{4}$ " " " " " "
22)		(SE $\frac{1}{4}$ of NE $\frac{1}{4}$ " " " " " "
23)		(SE $\frac{1}{4}$ of NE $\frac{1}{4}$ " " " " " "
Spring 24)		(NE $\frac{1}{4}$ of NW $\frac{1}{4}$ " Sec. 31, T 21 S, R 4 E
25)		(SE $\frac{1}{4}$ of SW $\frac{1}{4}$ " Sec. 30, " " " "
26)	0.2	(SE $\frac{1}{4}$ of SW $\frac{1}{4}$ " " " " " "
27)		(NE $\frac{1}{4}$ of SW $\frac{1}{4}$ " " " " " "
28)		(NE $\frac{1}{4}$ of SW $\frac{1}{4}$ " " " " " "
29)		(NE $\frac{1}{4}$ of SE $\frac{1}{4}$ " " " " " "
South Fork of Big Creek	2.0	NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 29, T 21 S, R 4 E
N. Fork of S. Fork Big Creek	0.5	NE $\frac{1}{4}$ of NE $\frac{1}{4}$ " Sec. 30, " " " "
Springs 30)		(NE $\frac{1}{4}$ of NE $\frac{1}{4}$ " " " " " "
31)		(NW $\frac{1}{4}$ of NE $\frac{1}{4}$ " " " " " "
32)	1.0	(NW $\frac{1}{4}$ of NE $\frac{1}{4}$ " " " " " "
33)		(NE $\frac{1}{4}$ of NW $\frac{1}{4}$ " " " " " "
34)		(SW $\frac{1}{4}$ of SW $\frac{1}{4}$ " Sec. 19, " " " "
35)		(SW $\frac{1}{4}$ of SW $\frac{1}{4}$ " " " " " "
N. Fork of Big Creek	2.0	NW $\frac{1}{4}$ of NW $\frac{1}{4}$ " " " " " "
Springs 36)		(SE $\frac{1}{4}$ of NW $\frac{1}{4}$ " Sec. 24, T 21 S, R 3 E
37)	0.2	(SW $\frac{1}{4}$ of NW $\frac{1}{4}$ " " " " " "
38)		(SW $\frac{1}{4}$ of NW $\frac{1}{4}$ " " " " " "
Springs 39)		(SE $\frac{1}{4}$ of NE $\frac{1}{4}$ " Sec. 23, " " " "
40)		(SW $\frac{1}{4}$ of NE $\frac{1}{4}$ " " " " " "
41)	0.3	(SW $\frac{1}{4}$ of NE $\frac{1}{4}$ " " " " " "
42)		(NE $\frac{1}{4}$ of SW $\frac{1}{4}$ " " " " " "
South Branch Rat Creek	0.3	NW $\frac{1}{4}$ of NW $\frac{1}{4}$ " " " " " "
Big Creek	1.0	SW $\frac{1}{4}$ of NW $\frac{1}{4}$ " Sec. 25, " " " "
Total	12.2	

(Application 6285, continued)

Diversion season named: January 1st to December 31st of each season.

Water to be used for: Subdivision purposes including domestic and recreational uses.

Place of use described: 8500 acres within Secs. 4, 5, 6, 7, 8, 9 and 16, T 22 S, R 4 E, Secs. 30, 31 and 32, T 21 S, R 4 E, Secs. 1 and 12, T 22 S, R 3 E, Secs. 22, 23, 24, 25, 26, 35 and 36, T 21 S, R 3 E, M.D.B.&M. All as shown on map filed with the Division of Water Resources.

Application 6570 was filed on February 18, 1930. It proposes appropriations as follows:

Source	Amount in cubic feet per second	Point of Diversion within
West Fork of Lime Kiln Creek	1.5	SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 9, T 22 S, R 4 E
South Fork of Big Creek	3.0	NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 29, T 21 S, R 4 E
North Fork of Big Creek	2.5	NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 19, " "
Total	7.0	

(All in M.D.B.&M.)

Diversion season named: January 1st to December 31st of each season.

Water to be used for: Irrigation and domestic purposes.

Place of use described: 598 acres to be irrigated and domestic use within Secs. 22, 23, 25, 26 and 36, T 21 S, R 3 E, Sec. 31, T 21 S, R 4 E, Secs. 5, 7 and 8, T 22 S, R 4 E, M.D.B.&M. all as shown on map filed with the Division of Water Resources.

Both Application 6285 and Application 6570 were protested by Henry Cowell Lime and Cement Company.

#### PROTEST

The protest of Henry Cowell Lime and Cement Company is directed against the proposed appropriation from the West Fork of Lime Kiln Creek. Protestant claims riparian rights and alleges in effect that Lime Kiln Creek rises upon its lands and flows throughout the entire course through

its lands to the Pacific Ocean, that these waters have been used by its predecessors in interest, the Rockland Land and Timber Company and that it is utterly impossible for applicant to divert for irrigation as proposed.

HEARING SET IN ACCORDANCE WITH SECTION 1a  
OF THE WATER COMMISSION ACT

Applications 6285 and 6570 were completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Resources and being protested were set for a public hearing in accordance with Section 1a of the Water Commission Act on March 26, 1932, at 9:30 o'clock A.M. in Room 535 State Building, Civic Center, San Francisco, California. Of this hearing applicants and protestant were duly notified.

GENERAL DISCUSSION

The only question at issue is the proposed appropriation from the West Fork of Lima Kiln Creek.

As advertised, Applications 6285 and 6570 proposed diversions from West Fork Lima Kiln Creek at a point within SW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 10, T 22 S, R 4 E, M.D.B.&M., the applicants being under the impression that the point was located on Forest Reserve lands. It was later learned that the lands were privately owned by the Henry Cowell Lime and Cement Company and a futile attempt to obtain right of access resulted in the filing of a petition to change the point of diversion to a point on lands of the applicant downstream within the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 9, T 22 S, R 4 E, M.D.B.&M.

This petition was approved by the Division without prior advertising as it appeared that the proposed change would neither in effect constitute the initiation of a new right nor operate to the injury of any other appropriator or legal user of water. Through an oversight on the part of

this office the protestant was not notified of the change until the day of the hearing. This fact is immaterial however as no showing was made either at the hearing or subsequently that protestant was adversely affected by the change which merely moved the point of diversion off its land onto the lands of applicant where the stream runs for a short distance before again returning to lands of protestant.

The testimony presented at the hearing on behalf of the applicants clearly indicated that the point of diversion from the West Fork of Lime Kiln Creek presently proposed is located upon the lands of Edward S. Moore one of the applicants. The rules and regulations of this office governing right of access have therefore been complied with.

Evidence was presented which clearly indicated that although at one time use of the waters of the West Fork of Lime Kiln Creek may have been made by the Rockland Land and Timber Company, predecessor in interest of the Henry Cowell Lime and Cement Company, this use had long since been abandoned and at the present time there were no facilities for diversion and use of the water.

No testimony was introduced on behalf of the protestant company in support of its contentions. The attorney for the protestant requested a continuance of the hearing in order that certain witnesses might be called but the motion was denied by the Examiner, it appearing to him that no showing had been made which justified one. The protestant's attorney was informed however that a rehearing might be requested, action upon the request to be governed by the showing that protestant might make in the matter.

Under date of April 9, 1932, protestant's attorney was advised that the Division would be disposed to set the matter for further hearing only upon (1) a showing of good cause for failure to attend and present the case fully at the time regularly noticed for hearing, and (2) an allegation of facts, which if sustained by appropriate evidence, would materially affect the ruling of the Division. The attorney was further advised that action would be suspended until April 25th awaiting further advises in the matter. Nothing further has been submitted and therefore the matter may be considered fully submitted.

#### CONCLUSION

The uses to which applicant proposes to put the water are useful and beneficial; the necessary right of access is assured and testimony presented at the hearing indicates that there is unappropriated water in the West Fork of Lime Kiln Creek which was the only source upon which protest was pressed. It is therefore the opinion of this office that Applications 6285 and 6570 should be approved.

#### ORDER

Applications 6285 and 6570 for permits to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the Division now being fully informed in the premises:

IT IS HEREBY ORDERED that said Applications 6285 and 6570 be approved and that permits be granted subject to such of the usual terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of the State of California this *9th* day of *May*, 1932.

EDWARD HYATT, State Engineer

BY *Harold Conkling*  
Deputy

WES:MP

