

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

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IN THE MATTER OF REVOCATION OF PERMIT NUMBER 337 HERETOFORE
ISSUED UPON APPLICATION NUMBER 571 OF BYRON D. BECKWITH
ALLOWING THE APPROPRIATION OF NINETEEN CUBIC FEET PER SECOND
FROM SACRAMENTO RIVER FOR AGRICULTURAL PURPOSES.

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DECISION NO. 571 D 89
Decided February 8, 1926

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OPINION

On January 20, 1917, Byron D. Beckwith filed application Number 571 for a permit to appropriate 40 cubic feet per second of waters of the Sacramento River to be diverted at a point in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 18, T. 17 N., R. 1 W., M.D.M., in Colusa County, and to be used for the irrigation of 737 acres of land located in Sections 17, 18, 19, and 20, of the said township and range.

On September 14, 1917, permit Number 337 was issued to this applicant for the diversion of 19 cubic feet per second from the Sacramento River at the point of diversion and for the acreage as stated in the application. The permit specified that construction work be completed by October 1, 1918, and that the water be completely applied to beneficial use by October 1, 1919.

Under date of September 4, 1919, the permittee advised that he had completed the construction work about June, 1919.

A field inspection of the construction work and use of water was made by Engineer Stafford of the Division of Water Rights accompanied by the permittee, on August 23, 1921. The report of this inspection submitted under date of March 18, 1922 sets forth that the permittee had installed a pump and motor at the described point of diversion, but that the capacity of the pumping plant would not exceed about seven cubic feet per second whereas the amount named in the permit is nineteen cubic feet per second; that the discharge pipes and a 400-foot flume installed had been damaged and would not permit of the diversion of water without considerable repairs; that the permittee had constructed canals leading from the point of diversion to the land to be irrigated of ample capacity to carry the amount of the permit, but that the canals had not been sufficiently extended to make possible the irrigation of about 350 acres on the eastern side of the permit area; that the permittee knew very little concerning the acreage that had been irrigated or the periods when the pumping plant had been operated, but that apparently the maximum use of water had occurred in 1919 when, it was estimated, about 200 acres of general crops and orchard had been irrigated; and that no diversion or use of water had been made in 1921.

This report further sets forth that of the 737 acres within the permit area, approximately 350 acres on the eastern side are part of an area subject to overflow when, in the flood seasons, the Sacramento River overflows through what is known as the "Moulton Break". In this connection, the permittee has stated that the construction of canals to and irrigation of the 350 acres subject to

overflow could not be undertaken as long as the "Pulpton Break" remained open; that he, with a number of others, petitioned the State Reclamation Board for permission to close the "Break", but that as this break (of long standing) and its channel are included as a part of the general flood control scheme for the Sacramento Valley, permission was refused. Apart from this area of approximately 350 acres subject to overflow, the inspection report shows, however, that there is an area of 387 acres which may be irrigated.

At the time the field inspection was made, the permittee had no definite plans for future development and did not know when the pumping plant and conduits would be repaired and irrigation resumed. Under these conditions it was not deemed advisable to allow an extension of time to permit the complete application of the water to beneficial use but rather to issue a license confirming such use of water as had been made. Accordingly, a license recommendation for 2.50 cubic feet per second, based upon the past irrigation of 200 acres, was made on November 16, 1923. Before the issuance of this license, however, it was found that the permittee had made no further use of water subsequent to 1920, and up to and including the 1924 irrigation season.

On July 29, 1924, applicant appeared at a hearing before the division of water rights and admitted no use of water during the years 1921, 1922, 1923 and 1924.

Four notices to applicant have been issued and events pertaining thereto have transpired as follows:

First Notice: April 14, 1924 - for failure to commence, prosecute and complete construction work - hearing set for May 14,

1924 - registered return card showed service April 17, 1924 - April 18, 1924, permittee requested a postponement which was granted by letter of April 25, 1924.

Second Notice: June 19, 1924 - for failure to commence, prosecute and complete construction work - hearing set for July 21, 1924 - registered return card showed service June 26, 1924 - telephone request for postponement on July 19, 1924, allowed by letter of same date granting postponement of hearing to July 28, 1924. On July 28, 1924, permittee appeared and admitted no use during 1921, 1922, 1923, and 1924, but stated he expected to make use during 1925 and pleaded for an extension of time for two years, asserting he had been diligent. Permittee was allowed until October 30, 1924, in order to enable his attorney to inspect our files and prepare and submit an argument in favor of an extension, but permittee was notified by letter of even date that in view of Section 20a his rights had apparently lapsed and furthermore it appeared that he had not been diligent and the attention of his counsel was directed to the effect of said section and to the question of diligence. On October 28, 1924, permittee's attorney requested additional time and by letter of October 30, 1924, was granted until November 13, 1924. Apparently permittee's attorney called at this office on November 12th, and in accordance with a verbal understanding with him a new notice and date for hearing was set.

Third Notice: November 19, 1924 - for failure to comply with the terms and conditions of the permit - hearing set for December 15, 1924 - more time requested by permittee's attorney on December 12, 1924.

Fourth Notice: December 17, 1924 - for ceasing to put water granted under said permit to beneficial use - hearing set for January 12, 1925 - more time requested by permittee's attorney on January 6, 1925, (admitted service before holidays; it was not sent by registered mail) - refused in letter to attorney - permittee visited office January 10, 1925, and by letter of January 12th, a continuance of hearing was granted to February 11, 1925, - on February 6, 1925, a further continuance was requested by permittee - refused by letter of February 9, 1925 - no appearance made on February 11, 1925.

It appears that this permit should be revoked and the application cancelled upon two grounds; to-wit, for failure to commence, prosecute and complete the construction work and for ceasing to put the water granted under the permit to beneficial use. A revocation upon the first ground is authorized by section 18 of the water commission act, and notice was given by registered mail and a hearing held in accordance therewith on July 26, 1924. A revocation upon the second ground is in order, notice having been given and a hearing having been held on February 11, 1925, as provided in Section 20 of the water commission act.

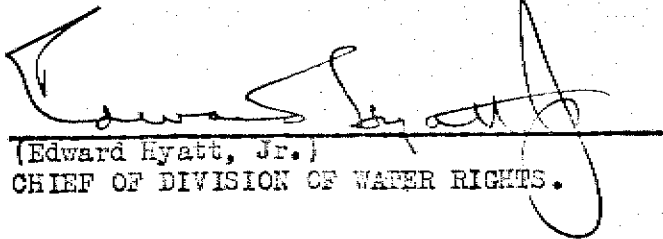
ORDER

Permit Number 337 having been heretofore issued upon application Number 571 setting time within which permittee should complete construction and use of water thereon proposed, it appearing to the Division of Water Rights after field inspection that permittee had failed to comply with the terms and conditions of said permit and had ceased to put the water appropriated to beneficial use, permittee

having been duly notified of a hearing wherein cause might be shown why said permit should not be revoked for failure to comply with the terms and conditions thereof and on the grounds that permittee had ceased to put the water appropriated to beneficial use, and the Division of Water Rights being now fully informed on the premises.

It Is Hereby Ordered that said permit be revoked and cancelled upon the records of this office.

Dated this 8th day of February, 1926.



(Edward Hyatt, Jr.)
CHIEF OF DIVISION OF WATER RIGHTS.