

D-716

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

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In the Matter of Revocation of Permit 1240 Heretofore Issued Upon Application  
2866 of Blanche B. Morton and Assigned to Jean Jacques Bertschmann  
allowing an appropriation of 0.63 cubic foot per Second  
from Big Salada Creek Tributary to the San  
Joaquin River in Stanislaus County  
for Irrigation Purposes.

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DECISION A. 2866 D - 239

Decided *Sept 19, 1929*

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APPEARANCES AT HEARING HELD July 16, 1929.

For Permittee and Assignee  
Blanche B. Morton and  
Jean Jacques Bertschmann

Edith Via

EXAMINER: 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

On December 15, 1922, Application 2866 was approved by the issuance  
of Permit 1240 allowing the permittee Blanche B. Morton the privilege of ap-  
propriating 0.63 cubic foot per second of the waters of Big Salada Creek,  
tributary to the San Joaquin River throughout the entire year for irrigation  
purposes upon 50 acres of land within the south half of Section 12, T. 6 S.,  
R. 7 E. M.D.B. & M.

The terms of the permit provided that construction work was to be

commenced on or before March 1, 1923, to be completed on or before May 1, 1923 and the water to be completely applied to the beneficial use proposed on or before June 1, 1923.

On November 8, 1923, the project was inspected by an engineer of this office who reported that although the construction work had been completed about four years prior to the inspection and the entire 50 acres named as the place of use in the permit had previously been irrigated, no use of water had been made under the permit. As this office was given to understand that use would be made the following year an extension of time until June 1, 1925, was granted within which to apply the water to complete beneficial use.

According to the progress report for the year 1924 the project had been completed but upon a second inspection made July 31, 1925, it was found that only about five acres had been irrigated due to deficiency in the water supply and a further extension of time was granted until July 1, 1927.

The progress report for the year 1926 stated that the same condition existed then as in the previous year and on July 16, 1927, the project was again inspected and the report submitted by the inspecting engineer indicated that the project had been abandoned, but upon representations made by permittee to the effect that the land had been leased to another tenant who would proceed with the project during the coming season a further extension was granted to December 1, 1928.

The 1927 and 1928 progress reports stated that the project had been completed and on May 24, 1929, it was again inspected and according to the report of the inspecting engineer the entire place of use was being used for stock grazing purposes and no signs of irrigation were in evidence excepting a patch of ground about 40 feet long and 20 feet wide at the end of the ditch which had apparently been moistened by water sometime before. The flashboards

at the intake had been replaced and the mud removed from the culvert; the ditch however bore no evidence of use during the past season beyond that above stated and it was noted that the water mark on the flashboards was on a level with the bottom of the ditch beyond the culvert. The creek was dry except little pools along its course.

On June 22, 1929, this office was informed that Mrs. Morton had assigned the permit to her nephew Jean Jacques Bertschmann.

It appearing to this office that permittee had failed to comply with the terms and conditions of the permit, a public hearing was held on Monday July 16, 1929, in Room 401 Public Works Building, at Sacramento, California, in accordance with Section 20 of the Water Commission Act.

Very little information was obtained from testimony presented at the hearing but an affidavit filed by Blanche B. Morton stated that although prior to issuance of permit the entire acreage had been irrigated, the deficiency of water supply in Big Salada Creek during recent years, particularly during the years 1927 and 1928 had rendered it impossible to irrigate. In 1926 Mrs. Morton alleges that the lands were leased to one Mariano Silva on condition that the diversion works were to be maintained and all available water in Big Salada Creek not to exceed 0.63 cubic foot per second was to be used for irrigation purposes on the permitted area. It appears that the available water was so used until the gates were destroyed by a cloudburst and upon Silva's failure to replace the structures, his lease was terminated and the lands leased to one George Avila who until his death two days prior to the hearing had been in charge of the property. It appears that Avila replaced the gates in the dam as directed, cleaned out the irrigation ditch and used all the water available which was practically nil due to the deficiency in supply.

Affidavits filed by Milton and Frank Swerer indicated that there had not been sufficient water in Big Salada Creek since the issuance of the permit to irrigate the lands of permittee.

Testimony presented at the hearing by Mr. Covell indicated that since 1926 there had been only a few days when water may have been available for irrigation purposes under Permit 1240 and only then after a cloudburst or excessive rainfall.

From the above it appears that the reason for non compliance with the terms of the permit was a deficiency in water supply during recent years. Whether or not a supply will be available in a year of average runoff is uncertain but it is believed that the permittee should be given an opportunity to avail himself of the opportunity to make use of the water if and when it becomes available and for this purpose it is the opinion of this office that reasonable extension of time should be granted the permittee within which to completely apply the water to beneficial use.

O R D E R

Permit 1240 having heretofore been issued in approval of Application 2866, it appearing to the Division of Water Resources that permittee had failed to comply with the terms and conditions of the permit, a hearing having been held at which permittee was afforded an opportunity to appear and show cause why the permit should not be revoked for failure to comply with the terms and conditions thereof, and the Division of Water Resources now being fully informed in the premises,

IT IS HEREBY ORDERED that said permit be continued and that the period heretofore allowed within which to apply the water to beneficial use thereunder

be extended to December 1, 1932.

WITNESS my hand and the seal of the Department of Public Works  
of the State of California this 19 day of Sept 1929.

EDWARD HYATT, State Engineer

By Harold Conkling  
Deputy

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