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

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In the Matter of Revocation of Permit 2400 Heretofore Issued
Upon Application 3945 of Christian Bollhorn to Ap-
propriate from an Unnamed Tributary of the
South Branch of Ten Eyck Creek in
Siskiyou County for Agri-
cultural and Domes-
tic Purposes.

DECISION R 3945 D 242

Decided *October 14, 1929*

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APPEARANCES AT HEARING HELD AT Sacramento May 21, 1929.

For Permittee

Christian Bollhorn

J. C. Boyd

EXAMINER: Everett N. Bryan, Deputy Chief for Harold
Conkling, Chief of the Division of Water
Rights, Department of Public Works, State
of California.

O P I N I O N

On January 22, 1926, Application 3945 of Christian Bollhorn was
approved by the issuance of Permit 2400 granting the privilege of diverting
0.10 cubic foot per second from the unnamed tributary of the South Branch of
Ten Eyck Creek from about May 1st to about November 1st of each season for
agricultural and domestic purposes on 60 acres of land. As a condition prece-
dent to diversion under the permit, Donahue Flat Swamp was to be drained

and a ditch constructed across said swamp and marsh to the ravine below said swamp, said ditch to be of a capacity sufficient to convey the maximum amount of water theretofore diverted by protestant Nelson from Notuck Creek. A clause was also inserted in the permit to the effect that no water should be diverted thereunder except through a water tight conduit. According to the terms of the permit construction work was to be commenced on or before June 1, 1926, to be completed on or before June 1, 1928, and complete application of the water to the proposed use was to be made on or before June 1, 1929.

According to the "Progress Report on Construction Work and Use of Water" for the year 1926 filed by the permittee in this office on December 27, 1926, construction work had been completed at an approximate cost of \$500, four acres of land had been irrigated and other land cleared and prepared for seeding.

According to the 1927 and 1928 progress reports 6 acres of land were irrigated during these years and according to the 1928 report the project was completed.

Under date of March 25, 1929, this office wrote to the permittee in an effort to ascertain whether or not beneficial use was in fact, completed and whether or not the conditions named in the permit had been complied with. In reply this office received a statement from the permittee which indicated that conditions relative to the construction of a water tight conduit and the draining of Donahue Flat had not been complied with and accordingly the permit was set for hearing in accordance with the provisions of Section 20 of the Water Commission Act in order that permittee might have opportunity to show cause why the permit should not be revoked because of failure to comply with the terms and conditions thereof. The hearing was held on May 21, 1929, at 10:00 o'clock A. M. In Room 409 Public Works Building.

According to the testimony presented at the hearing it appears that permittee misunderstood our letter of March 25, 1929; that Donahue Flat Swamp had actually been drained by him and planted to timothy and rye grass for pasture purposes; that the ditch used for draining the swamp was of a capacity sufficient to convey the maximum amount of water theretofore diverted by protestant Nelson from Notuck Creek and that the permittee's diversion ditch was a water tight conduit being constructed in clay which was impervious and that measurements made by him indicated that there was no substantial loss in transit between the inlet and outlet of the ditch.

Although the report for the year 1928 states use of water has been completed it indicated that only 6 acres had been irrigated out of a possible 60 and furthermore the permittee informed this office on April 11, 1929, that it was proposed to increase the irrigated area.

In view of the above we are of the opinion that permit should not now be revoked and that an order should be entered allowing a reasonable extension of time within which to apply the water to complete beneficial use under this application and permit.

ORDER

Permit 2400 having heretofore been issued in approval of Application 3945, it appearing to the Division of Water Rights 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 not now revoked and that a

reasonable extension be allowed within which to complete beneficial use there-
under.

WITNESS my hand and the seal of the Department of Public Works of
the State of California this 14th day of October 1929.

EDWARD HYATT, State Engineer

BY Harold C. Cushing
Deputy.

WES:GG
October 9, 1929.

OCT 16 1929 E.H.B.
Cushing