

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

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In the Matter of Revocation of Permit 1478 Heretofore
Issued Upon Application 2435 of Guy Wilkinson and
Assigned to E. P. Vandercook Allowing an
Appropriation of 15,000 Cubic Feet per
Second from the Feather River in
Butte County for Power Purposes.

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DECISION A. 2455 D-270

Decided *September 23, 1930*

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APPEARANCES AT HEARING HELD MAY 14, 1927

For Permittee

E. P. Vandercook

P.B. Cross and R.W. Van Norden

EXAMINER: Edward Hyatt, Chief of the Division of Water
Rights, Department of Public Works, State of
California.

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O P I N I O N

On July 12, 1923, Application 2435 of Guy Wilkinson was approved
by the issuance of Permit 1478 allowing the appropriation of 15,000 cubic
feet per second from the Feather River in Butte County throughout the entire
year for power purposes at two power houses to be located in $SE\frac{1}{4}$ of $SE\frac{1}{4}$ of
Section 32, T 20 N, R 4 E, and in $E\frac{1}{2}$ of $E\frac{1}{2}$ of Section 5, T 19 N, R 4 E.
The estimated cost of the project was \$300,000.

According to the terms of the permit, actual construction work
was to begin on or before December 1, 1925 to be completed on or before

December 1, 1923 and complete application of the water to the proposed use was to be made on or before December 1, 1923.

In acting upon the application, this office issued permit prior to clearance by the Federal Power Commission due to the fact that the Federal Power Commission had been at all times cognizant of the development proposed and the project was reduced so as to bring the development within the boundaries of land controlled by the applicant. This procedure was followed in order that this office might comply with the applicant's request for immediate action upon the application.

According to the 1923 progress report filed in this office on January 19, 1924, no actual construction work had been done but about \$1,500.00 had been expended on preliminary surveys. A preliminary report had been made which was to be checked by Rudolph W. Van Norden, Consulting Engineer of San Francisco, but due to Mr. Van Norden's illness, he had not been able to complete his investigations.

Responsive to the request of the applicant, an extension of time until June 1, 1924 was allowed within which to commence construction work.

On October 1, 1926, this office received an assignment of the permit from Guy Wilkinson to E. F. Vandercook.

Under date of February 16, 1927, this office was advised that P. B. Cross and associates proposed in the immediate future to proceed with the project for a low head installation. No actual construction work had been done and a further continuance of time within which to commence construction work was requested.

It appearing to this office that permittee had failed to comply with the terms and conditions of the permit, the matter was set for a public

hearing, in accordance with Section 20 of the Water Commission Act, on May 14, 1927 at 10:00 A.M. in Room 707, Forum Building, Sacramento, California. Of this hearing, Guy Wilkinson, Rudolph W. Van Norden and E. P. Vandercook, permittee, were duly notified.

P. B. Cross and Rudolph Van Norden appeared on behalf of the permittee. T. L. Phillips, Assistant Engineer of the Western Pacific R. R. Company was present but did not enter an appearance.

The testimony presented at the hearing indicated that the plans were completed for "installation activities" in conjunction with the Great Western Power Company. It was proposed to reduce the amount of water applied for to 7500 second feet and to start active construction work on the project on which approximately \$25,000 had been expended for preliminary investigations; arrangements had been made for the disposal of the power and the financing of the project, and contracts were about to be let involving some \$3,000,000. Ownership or control of practically all the necessary lands had been secured and it appeared that P. B. Cross and Rudolph W. Van Norden were to take over the project and proceed with it although the project to be developed differed materially from the project originally proposed.

Subsequent to the hearing Mr. Van Norden requested an extension of time until August 12, 1927, within which to commence construction work, and until November 14, 1929, within which to complete the project, and in support of the request an attempt was made to show that a portion of the construction work had been commenced prior to the issuance of the permit, which, in the permittee's opinion, should be considered as work done under the permit, for the reason that if it had not been done it would have to be executed and such execution would take a definite time with which the

project should be credited. The attention of this office was also directed to the fact that the "present applicants" owned all of the land riparian to the stream from a point well above the point of diversion to a point well below the point of return and therefore could rest in absolute security upon their riparian rights in constructing and operating the project; that the extension of time was requested not for its legal protection but exclusively for its "psychological" effect upon financial agencies.

According to the progress report for the year 1927, filed in this office January 1, 1928, it appeared that P. B. Cross, who filed an option contract to purchase the property from assignees of E. P. Vandercook, had been endeavoring to complete a contract with the Great Western Power Company for sale of power to them and it was stated that until all the details of the proposed contract had been worked out it was impossible to commence construction work.

According to the progress report for the year 1928, filed on February 25, 1929, no construction work had been done, E. P. Vandercook, the record permittee, was deceased, and the reason given for not proceeding with the project was the conflict with the State's plan for the conservation of the waters of the Feather River. This reason cannot be accepted as a valid excuse as applications filed prior to July 29, 1927, (the date Chapter 286, Statutes 1927, became effective), are prior in right.

On November 15, 1929, a progress report form was sent to the permittee in an effort to obtain a statement relative to the progress which was being made toward the consummation of the project. No reply was received and on January 15, 1930, and again on February 15, 1930, other notices were sent to the permittee but no word has been received from the interested parties since February 25, 1929.

It would appear therefore, in view of the fact that the dates for commencing and completing construction work and for applying the water to complete beneficial use have expired, and the apparent lack of diligence and interest in the matter on the part of the permittee or his successors in interest, that this office cannot consistently withhold action longer and therefore Permit 1473 should be revoked.

O R D E R

Permit 1473 having heretofore been issued in approval of Application 2435, 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 1473 be revoked and cancelled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 23 day of Sept, 1930.

EDWARD HYATT, State Engineer

BY Harold Conkeling
Deputy

