

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

In the Matter of Application 3238 Permit 1865 of the Los
Verjels Land and Water Company To appropriate
Water From Dry Creek In Yuba County For
Irrigation Use.

Decision A 3238-D-336

Decided *November 7, 1932*

APPEARANCES AT HEARING held May 13, 1929

For Permittee - Evan J. Hughes, Atty.,
Capital Nat'l. Bank Bldg.,
Sacramento.

F. M. Turner, Pres. & Gen. Mgr.
J.C. Boyle, Sec'y.

EXAMINER: Harold Conkling, Deputy in Charge of Water Rights.

O P I N I O N

It appearing that progress commensurate with the size of the project was not being made in the consummation of the rights initiated by Application 3238, permittee was cited to show cause on May 13, 1929, why the permit issued in approval of said application should not be revoked because of failure to comply with the terms and conditions thereof with respect to diligence as prescribed by Paragraphs 3 and 4 therein. Of this hearing due notice was given to permittee and appearance was duly made at the appointed time by official representatives of permittee. Briefly stated the circumstances surrounding this case appear to be as follows:

Notices of appropriation under the provisions of Section 1413 of the Civil Code were posted by one F. M. Turner on July 7, 1909, July 12, 1909, and September 29, 1911, claiming a total of 11,000 miners inches from Dry Creek in Yuba County for irrigation and other uses, and according to affidavit of the claimant dated February 23, 1920, actual construction work was begun within 60 days and thereafter prosecuted diligently. These rights were assigned October 3, 1911, to the Los Verjels Land and Water Company, and on June 25, 1921, that company, which is a mutual water company impressed with the duty of public service, filed with the Division of Water Resources an application (No. 12-2406) under the provisions of Section 12 of the Water Commission Act requesting the Division to prescribe the time within which the full amount of water thus appropriated should be applied to a useful and beneficial purpose.

The record discloses that a storage dam some 60 feet in height with an impounding capacity of some 1500 acre feet had already been completed when this application was filed; that the main diversion conduit had been in use for many years (as far back as the "fifties" it was once stated); that Mr. Turner and his associates following the posting of the notices referred to above did some reconstruction work, enlargement, and new construction prior to the filing of Application 12-2406; and that some 300 to 400 acres of orchard and some 3,000 acres of pasture were already being irrigated.

Dissent among the stockholders, the remoteness of the project, and various other obstacles had however interfered with rapid development and therefore the request embodied in Application 12-2406 that the Division register its approval of the diligence so far manifested and prescribe a time for the completion of beneficial use. The application was favored and on February 29, 1924, Certificate #14 was issued certifying that the Division

Land and
had "considered the work done by the Los Verjels/Water Company of San Francisco, California, in appropriating twenty five (25) cubic feet per second and eight thousand six hundred (8600) acre feet per annum of the waters of Dry Creek" and fixing the time within which complete beneficial use should be made as ending July 1, 1926.

Applicant was, however, apprehensive lest the contemplated additional development might not proceed within that time and, being advised that the Division would not favor a request for further extension under this priority, filed Application 3238 under the provisions of Section 11 of the Water Commission Act. This application was for 50 cubic feet per second and 8600 acre feet per annum and it is clear from the record, was intended to duplicate the rights covered by Application 12-2406 and act as a second line of defense in case rights under the earlier filing were not fully consummated within the prescribed time. A permit was thereafter issued in approval of Application 3238 allowing the amounts requested and prescribing that actual construction work shall begin on or before June 1st, 1924, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked; that said construction work shall be completed on or before July 1st, 1928, and that complete application of the water to the proposed use shall be made on or before July 1st, 1930.

The report filed by permittee on February 19, 1927, indicated that little if any progress had been made in connection with development of the project since issuance of the permit three years before and a representative of the Division therefore made an inspection of the project on September 28th, 1927. Though advised of the impending visit the manager of Los Verjels Land and Water Company failed to meet the Division's representative on that occasion and one Fred Hecker, an employee of the company who was interviewed, manifested reluctance to give out any information on the grounds that he had received no instructions

in the matter.

Though requested on November 15, 1927, December 15, 1927, and January 14, 1928, for a report of progress permittee failed to make any report and on August 20, 1928, some weeks after expiration of the period allowed in the permit for completion of construction, a representative of the Division again visited the project to make an inspection of development. Again no official representative of the permittee was on hand to show the Division representative over the project, although permittee had been formally notified of the impending visit and requested to have a representative present. Mr. Fred Hecker, representing Dr. V. T. McGillicuddy, who was a minority member of the board of directors of Los Verjels Land and Water Company, and formerly foreman in charge of the irrigation system, again met with the Division representative by request of Dr. McGillicuddy. Such information as the Division representative could gather on this occasion indicated that nothing substantial in the way of new construction had occurred since Application 3238 was approved on February 29, 1924; substantially the same acreage was being irrigated as had been irrigated for several years prior to the filing of Application 3238; the main canal had a capacity sufficient to deliver approximately 26 cubic feet per second only at the upper edge of the area to be irrigated; and whatever had been done in the way of construction was more in the way of replacements than the addition of increased facilities.

Having this knowledge of the situation, and the time within which to complete construction having expired some 10 months previously without petition for extension to complete having been filed, the Division on April 17, 1929, cited permittee to show cause why Permit 1665 theretofore issued in approval of Application 3238 should not be revoked because of failure to comply with the terms and conditions thereof. At the appointed time F. H. Turner, President of

the Los Verjels Land and Water Company, J. C. Boyle, Secretary of the Company, and Evan J. Hughes, Attorney, appeared. Both Mr. Turner and Mr. Boyle testified as to the facts with respect to development under the application and permit and their testimony substantially confirmed the report by the Division representative rendered after his visits to the project in September 1927 and August 1928, except that Mr. Boyle testified that the diversion conduit had been enlarged in certain sections during the process of betterments in recent years, and that they were then irrigating some pasture lands that were not irrigated in 1924, in addition to the 300 to 400 acres of orchard. These features of Mr. Boyle's testimony are, however, discounted by reason of the fact that when Application 12-2406 was filed on June 25, 1921, it was stated by applicant:

"The present height of the dam stores 1500 acre feet which is efficiently distributed each season over the 400 acres of orchard belonging to our settlers and over grazing lands of the company not as yet disposed of to settlers."

If some portions of the main canal were enlarged between the date Application 5238 was approved on February 29, 1924, and the date of the hearing on May 13, 1929, there is nothing in the record to show that these enlargements did as a matter of fact increase the capacity of the canal throughout its entire length, and both the repeated statements to the contrary contained in the record by those familiar with the history of the project and the fact that there was no increase in the irrigation of developed lands as distinguished from the wild flooding of pasture lands, leave one with the impression that there was no substantial increase in the over-all carrying capacity of the main canal of permittee.

At the time of the hearing on May 13, 1929, the representatives of permittee testified that the lack of progress was due largely to internal

dissension among stockholders of the company, that the directorate had been organized, and that arrangements had been consummated by which it was hoped permittee would be able immediately to proceed in the matter. An earnest plea was therefore made that action be withheld to afford further opportunity for development under the permit. Action was accordingly suspended.

Progress reports were requested of the permittee at the close of 1929, in 1930, 1931, and on October 1, 1932, but no reports have been filed. Informal statements by representatives of the company have, however, from time to time indicated that no progress was being made.

Under the circumstances we are of the opinion that progress commensurate with the size of the project has not been manifested; that no rights have accrued under Application 3238 Permit 1665 which had not accrued, prior to the filing of this application, under the rights initiated by the earlier appropriation of predecessors in interest of the company as more particularly described in and covered by Application 12-2406; and that Permit 1665 should accordingly be revoked.

ORDER

Permit 1665 having heretofore been issued in approval of Application 3238 prescribing that construction should be completed on or before July 1, 1928, and that the water should be applied to complete beneficial use on or before July 1, 1930, it appearing to the Division of Water Resources that the terms and conditions of the said permit were not being complied with, the permittee having been duly cited to show cause why said permit should not be revoked because of failure to comply with the terms and conditions thereof, a hearing having been held, and the Division of Water Resources now being fully advised in the premises

IT IS HEREBY ORDERED that said Permit 1665 heretofore issued in ap-

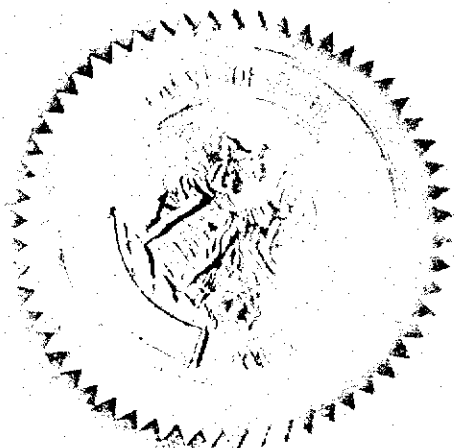
proval of Application 3238 be revoked.

WITNESS my hand and the seal of the Department of Public Works of
the State of California, this *7th* day of *November*, 1932.

EDWARD HYATT,
STATE ENGINEER

By *Harold ...* Deputy

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