

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

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In the Matter of Revocation of Permit 711 Application 1374
of Julius C. Thorp on the Grounds of Failure to Observe
the Terms and Conditions of Said Permit

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DECISION 1374 D 175

Decided December 2, 1927.

APPEARANCES AT HEARING HELD September 12, 1927

For Permittee

J. C. Thorp

EXAMINER: Everett N. Bryan, Deputy Chief for Edward Hyatt, Jr.,
Chief of Division of Water Rights, Department of Public
Works, State of California.

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O P I N I O N

It appearing to the Division of Water Rights that in
the matter of Application 1374, Permit 711 had failed to observe the
terms and conditions of said permit, a hearing was set as provided in
Section 20 of the Water Commission Act for September 12, 1927, in the
Finance Bldg., Los Angeles, at which permittee was required to show
why Permit 711 should not be revoked.

Julius C. Thorp, permittee, appeared at the time and place set
and after consultation with the examiner agreed within ten days to file a
new application in place of Application 1374 Permit 711. In a
letter, if and when permit was issued on the later application,
application was received from Mr. Thorp on September 27, 1927, with
the filing fee required by law. He was at that time advised that
application could not be accepted without the filing fee.

no reply from him, his attention was again directed to the matter under date of October 7, 1927. Nothing further has been heard from him in the matter; the filing fee required in connection with the proposed new application has not been filed; and the facts in connection with Application 1374 Permit 711 appear to be as follows:

This application was filed July 23, 1919 for domestic purposes and the irrigation of 150 acres. Applicant indicated his intention to begin construction June 1, 1920, complete construction on or before October 1, 1920, and completely apply the water to beneficial use on or before July 1, 1921. Permit was issued April 7, 1920 allowing 1.62 cubic feet per second from Arrastre Creek in San Bernardino County, and until July 1, 1920 to begin construction, to January 1, 1921 within which to complete construction, and until July 1, 1921 within which to complete beneficial use of the water.

Inspection of the project was made by an engineer of the Division of Water Rights on June 7, 1921 and he reported that little or nothing had been done in the way of development of the project -- a condition which was explained by the permittee as being due to the fact that both he and his wife had been sick. An extension was thereupon allowed to July 1, 1923 within which to complete construction and use.

Under date of July 1, 1923 permittee advised that the original plan of development had not been carried out because "the amount of water available would not justify the expenditure of the original figure----- the present conditions would not justify any further development on a larger scale for irrigation purposes." The project was accordingly inspected by an engineer of this office on September 3, 1923 and he reported that some half miner's inch had previously been used for domestic and stock use and

the irrigation of a small garden during the period from about May 1 to about December 1, also that permittee had abandoned all intention of attempting to irrigate a larger area because of scant water supply.

It was the intention of the Division of Water Rights to issue a license confirming the right of permittee to one half miners' inch based upon the report of this inspection, but before this could be done, a protest to Application 3940 of L. J. Warren and William K. Warren filed by permittee revealed the fact that permittee had further plans of development involving an extension or increase in use, and changes both in point of diversion and place of use. The advisability of filing a new application to accomplish these purposes was suggested to the permittee but without effect. License action was accordingly withheld.

On February 18, 1926 permittee reported (1) that construction and use were not complete on account of there not being sufficient water to justify the expense -- barely enough for house use, (2) that it was intended to complete construction and use on or before September 1, 1926, (3) that \$475 had been spent to date on construction, a part of which had been destroyed by a cloudburst and (4) that the property had been in litigation which had now terminated and that in the coming spring permittee could proceed to complete the project.

On July 1, 1926 the project was again visited by an engineer of this office who reported that there was no one on the place, that it appeared no one had occupied it for sometime, that the dam reported at the time of the previous inspection had been washed out and not replaced, that the flume was in poor condition and that the land showed no evidence of having been irrigated.

Letters from permittee under date of July 20 and August 30, 1926 excused the situation by explaining that there had been no water running in the source during the past two years and that there had also been some doubt as to his ability to hold the land. He further indicated a desire to make certain changes in the project including a change in point of diversion.

Reply was made to this by the Division under date of September 10, 1926 advising the permittee that apparently the new project was so different from the original and the past record of diligence of the permittee so doubtful that it would be safer to proceed under a new application.

Permittee was further advised:

"If no reply to this letter is received within 30 days from date it will be necessary for this office to hold a hearing at which the revocation of the permit will be considered on the grounds of abandonment."

No reply was received to this letter and accordingly, the matter was set for hearing in Room 1026 Sun Finance Bldg., Los Angeles, at 10:00 o'clock A.M. on November 22, 1926, and permittee required to give five days notice of intention to appear.

No notice of intention to appear was received but permittee did appear at the time and place noticed. He explained to the examiner that while he had not completed the project as required by the terms and conditions of the permit he had spent some \$700 the previous month and could complete the project the following year. He further stated that the point of diversion had been changed upstream.

There followed some letters between the Division and the permittee in which an effort was made to explain to permittee that promise of future performance could not justify an extension of time within which to complete

the project, but that such extension could only be allowed for good cause; also that the project now proposed was so different from the original and the past record of diligence in connection with it so doubtful that his purposes would be best served by filing a new application and withdrawing Application 1374 Permit 711.

Permittee, however, desired a further hearing at which he could present evidence of cause why permit should not be revoked. Accordingly, such a hearing was set as noted above for September 12, 1927, and permittee appeared. However, after discussing the situation with the examiner and without presenting evidence, permittee agreed within 10 days to file a new application to take the place of Application 1374 Permit 711 and upon approval of the new application to withdraw the old one.

Permittee has failed to proceed with this program, although twice brought to his attention. It appears clear that there has not been such diligent effort toward consummation of this project as might rightfully be expected of an appropriator who undertakes in good faith to acquire a water right and proceeds earnestly, diligently and with all reasonable speed toward that end. We are of the opinion therefore, that Permit 711 heretofore issued upon Application 1374 should be revoked.

ORDER

It appearing to the Division of Water Rights that permittee in the matter of Permit 711 Application 1374 had failed to observe the terms and conditions of said permit, permittee having been so notified and accorded a hearing as provided in Section 20 of the Water Commission Act and the Division of Water Rights now being fully advised in the premises:

IT IS HEREBY ORDERED that Permit 711 Application 1374 be revoked
and cancelled upon the records of the Division of Water Rights.

Dated at Sacramento, California, this 2nd day of December , 1927.

Harold Conzling

(Harold Conzling)
CHIEF OF DIVISION OF WATER RIGHTS

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