

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

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In the matter of the Revocation of Permit 1107 heretofore issued upon Application 1762 of the Sutter Mutual Water Company and assigned to A. L. Reel allowing the appropriation of fourteen cubic feet per second from the Sacramento River in Sutter County for Agricultural Purposes and in the matter of the Revocation of Permit 1108 heretofore issued upon Application 1763 of the Sutter Mutual Water Company and assigned to P. J. Hiatt allowing the appropriation of six cubic feet per second from the Sacramento River in Sutter County for agricultural purposes.

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DECISION A. 1762, 1763 D 167
Decided *August 20, 1927*

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APPEARANCES AT HEARING HELD June 21, 1927.

For Permittees:

P. J. Hiatt and A. L. Reel

A. R. Waybur

EXAMINER: Everett N. Bryan, Deputy Chief of the Division of Water Rights 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

On July 31, 1922 the Division of Water Rights approved Applications 1762 and 1763 by the issuance of Permits 1107 and 1108 respectively. The applications were filed by, and the permits were issued in the name of, the Sutter Mutual Water Company although the lands to be served were owned by other parties.

Sutter Mutual Water Company was formed by the Sutter Basin Company as a holding company in the name of which stock had been issued representing the

value of a pumping and distribution system capable of irrigating not only the lands described in these applications but also a large area of adjacent lands. The Sutter Basin Company had constructed this irrigation system and proposed by means thereof to serve lands which it had sold and was then endeavoring to sell, and expected to be reimbursed as to the cost by the sale of stock through the Sutter Mutual Water Company.

The particular lands to be served under these two permits had already been sold and while the owners thereof evidenced no particular interest in securing the permits they displayed no hostility to the plan when advised of the applications. The permits which were issued allowed until April 1, 1925 to complete construction and until June 1, 1925 to complete use.

The annual progress reports received covering the year 1922 (Paragraph 4) showed construction complete. No land had yet been irrigated under either of the two permits however and in connection with Permit 1107 it was estimated use would be complete before July 1, 1925.

The annual progress reports received covering the year 1923 showed substantially the same as the reports of the preceding year and so also did the reports for the ensuing year (1924).

An inspection of the two projects was made on August 3, 1925 by an engineer of the Division of Water Rights. He reported that the areas specified in these two applications and permits were susceptible of service by means of the same works as those of the Sutter Mutual Water Company serving the lands under Applications 581, 878, 879 and 880, but no use of water had yet been made by the owners of the land to be served under Applications 1762 and 1763, Permits 1107 and 1108 and so far as he could learn there was then no prospect of early use of water by these land owners.

Thereafter the Division (December 7, 1925) addressed a letter to the

Sutter Mutual Water Company suggesting withdrawal of the two permits to which the Sutter Mutual Water Company replied (December 15, 1925) requesting an extension of three years time and offering in support of the request the following representations:

- "1. A recent change of ownership of the property covered.
2. Our canal system is already constructed to the above mentioned property.
3. The new owners are anxious to plant irrigated crops and realize the importance of the early date of the present application and permit. "

Based upon these representations an extension was thereafter (12-28-25) allowed to June 1, 1926 only within which to complete use, the feeling of the Division being that the past record of diligence did not then warrant a longer extension.

The two projects were again inspected by an engineer of the Division on September 14, 1926 and he reported the status of the two projects the same as in the preceding year. Almost immediately thereafter requests were received from the Sutter Mutual Water Company on behalf of the owners requesting further extensions of time for completion of use under the two permits.

The matter was taken under advisement and no action had yet been taken when the progress reports for the year 1926 were received again showing no progress.

On March 17, 1927 notices of assignment were received transferring the rights under Permit 1107 to A. L. Reel and the rights under Permit 1108 to P. J. Hiatt and on April 15, 1925 these two assignees called at the office of the Division of Water Rights to press further the requests theretofore made for a further extension of time within which to complete. The showing made by them in support of this request was to the effect that the rates which the Sutter Mutual Water Company proposed to charge for service were too high and that two years previously when they had sought service from the Company it had re-

fused to sell them the stock. They were advised that this showing could not be considered sufficient to justify the further extension requested and that failing to receive a further and more potent showing before May 1, 1927 the two permits would be set for hearing at which permittees would be required to show cause why Permits 1107 and 1108 should not be revoked for failure to comply with the terms thereof.

Thereafter on May 19, 1927 no further showing having been made and it appearing to the Division of Water Rights that permittees under Permits 1107 and 1108 had failed to comply with the terms and conditions of said permits a hearing in accordance with the provisions of Section 20 of the Water Commission Act was set for June 21, 1927 at 10:00 o'clock a.m. in the office of the Division of Water Rights at 707 Forum Building at which hearing said permittees were required to show cause why said permits should not be revoked for the reasons aforesaid.

The hearing was convened according to notice and appearance was made by A. R. Waybur of the Sutter Mutual Water Company on behalf of both parties. Mr. P. J. Hiatt was present but Mr. A. L. Reel was not present.

Testimony and evidence was taken from which the facts appear to be that the Sutter Mutual Water Company refuses to sell to A. L. Reel, permittee under Permit 1107 the necessary stock by which he can secure water as proposed under said permit and Mr. Reel now proposes to look to other means, the ditches which would serve him having been plowed in.

It appears that when Mr. Hiatt acquired the $W\frac{1}{2}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32, T 15 N, R 2 E, M.D.B. & K. from his predecessors in interest in 1922 he understood there was included with it the necessary shares of stock in the Sutter Mutual Water Company to irrigate the land. There was some confusion over the matter and for a time there was doubt whether the Company would sell him the

stock and there were some differences and negotiations concerning proper terms of sale. It also appears that these negotiations for purchase of the stock may not have been so actively pressed as they might have been were it not that the drainage system for this area had not yet been constructed and Mr. Hiatt realized that irrigation if practiced by him might result in damage to adjoining lands. It appears also that during the subnormal years of 1924 and 1926 the Sutter Mutual Water Company did not wish to extend the irrigated acreage dependent on its system and therefore discouraged irrigation of new lands although its system was constructed to serve such lands.

The differences as to the terms of purchase of the stock by Mr. Hiatt have now been worked out and some five days prior to the hearing of June 21, 1927, Mr. Hiatt deposited with the Sutter Mutual Water Company his check covering the purchase price of stock to irrigate the $W\frac{1}{2}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32, T 13 N, R 2 E, M.D.B. & M. Acceptance of this check was at the time of the hearing awaiting action by the Division upon Mr. Hiatt's request for further extension of time under the permit. It appears further that the problem of drainage has been worked out so that Mr. Hiatt need no longer hesitate about proceeding with his development on this account.

Mr. Hiatt declares himself now ready and desirous of proceeding with use under the permit and in view of the fact that the necessary works have been constructed, 120 acres of the land to be served under the permit are now in the hands of an owner who desires to make use of the water, and various obstacles hitherto preventing use are either removed or in the way of being removed an extension of time within which to completely apply the water to the 120 acres only appears in order.

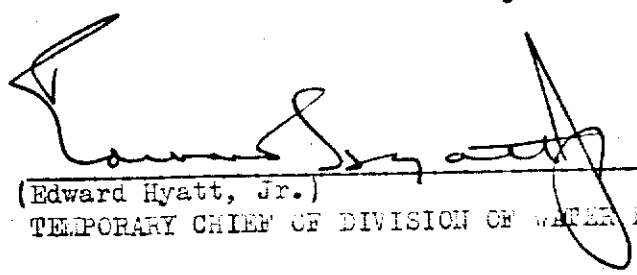
O R D E R

Permits 1107 and 1108 having heretofore been issued upon Applications 1762 and 1763 allowing until June 1, 1925 within which to completely apply the

water to beneficial use, and thereafter upon sufficient showing of cause the time having been extended to June 1, 1926 within which to completely apply the water to beneficial use, this time having expired without the water being put to beneficial use as prescribed and it appearing to the Division of Water Rights that said permittees had failed to comply with the terms and conditions of the permit, a hearing having been held as provided in Section 20 of the Water Commission Act and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that Permit 1107 heretofore issued upon Application 1762 be revoked and that an order be entered extending the time within which to completely apply the water to beneficial use on the $W\frac{1}{2}$ NE $\frac{1}{4}$ and N $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32, T 13 N, R 2 E, M.D.B. & M. under Permit 1103 heretofore issued upon Application 1763 to December 1, 1928.

Dated at Sacramento, California, this *20th* day of *August*, 1927.



(Edward Hyatt, Jr.)
TEMPORARY CHIEF OF DIVISION OF WATER RIGHTS

WES: MP
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