

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

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In the Matter of Licenses 1 and 100 Confirming the Right of California-Engels Mining Company to appropriate from Lights Creek, East Fork of Lights Creek and Morton Creek in Plumas County for Power Purposes and Applications 9145, 9146, and 9147 of Rosalee Mining and Milling Corporation to appropriate from the Same Stream for Mining Purposes

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DECISION 86 - 9145 - 9146 - 9147 D 436

Decided *November 28, 1938*

APPEARANCES AT HEARING HELD IN SACRAMENTO ON NOVEMBER 7, 1938

For Licensee

California - Engels Mining Company

None

For Applicant

Rosalee Mining and Milling Company

Messrs. B. K. Badger &
W. T. Williams

For Protestants

H. Enhorning &
Geo. E. Harrison

J. A. Pardee

EXAMINER: Everett N. Bryan, Supervising Hydraulic Engineer for Harold Conkling, Deputy in Charge of Water Rights, Division of Water Resources, Department of Public Works, State of California.

O P I N I O N

Description of Projects Involved

On August 6, 1915, the State Water Commission, supposedly functioning under the provisions of Chapter 586, Statutes of 1913, issued License No. 1 confirming the right of Engels Copper Mining Company, later known as California - Engels Mining Company, to appropriate 25 second feet for the generation of power at a power house in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 17, T 27 N, R 11 E, M.D.B. & M. the diversion to be made as follows:

From Main Lights Creek within the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 33, T 28 N, R 11 E, M.D.B. & M.

From E. Branch Lights Creek within the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 33, T 28 N, R 11 E, M.D.B. & M.

From Morton Creek within the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 33, T 28 N, R 11 E, M.D.B. & M.

This license was issued in connection with Lights Creek No. 1 and Lights Creek No. 2 applications filed August 1, 1914, and August 4, 1914, respectively, with that State Water Commission created by Chapter 41, Statutes 1911. The license purported to confirm a right in the waters of Morton Creek for which application had not been made. To correct this discrepancy Application 86 was filed July 27, 1915, with the then existing State Water Commission, seeking to appropriate 10 second feet from Morton Creek for the same purpose and at the same point noted above. In connection with this last named application License 100 was subsequently issued under Chapter 586, Statutes 1915, confirming the right of Engels Copper Mining Company, later known as California - Engels Mining Company, to appropriate 10 second feet from Morton Creek.

Applications 9145, 9146, and 9147, filed October 13, 1937, by W. T. Williams, and later assigned to Rosales Mining and Milling Corporation, propose appropriations from Lone Rock Branch of East Fork of Lights Creek, from West Fork of Lights Creek, and from Morton Creek, respectively, for placer mining purposes on the Vina, Will and Bill, Lucky Strike, and Badger claims.

California - Engels Mining Company protested all three of the Rosales Mining and Milling Company applications, and H. Eahorning and George E. Harrison, asserted lessees of the rights of California Engels Mining Company on Morton Creek, protested Application 9147, basing their claim of right upon a lease from the California - Engels Mining Company by which they were permitted to operate a sawmill upon mining claims of the company and use in connection therewith the water right of the company to divert from Morton Creek.

The protests of both California - Engels Mining Company and Eahorning and Harrison were based upon Licenses 1 and 100 referred to above. Reports filed by California - Engels Mining Company, Licensee, indicated however there has been no use under

said licenses for more than three years. Rosales Mining and Milling Corporation, Applicant under Applications 9145, 9146 and 9147 therefore urged these protests should be overruled upon the ground the rights under Licenses 1 and 100 were forfeited by reason of non-use. Under the circumstances it was deemed appropriate to call simultaneous hearings, in connection with Licenses 1 and 100 under the provisions of Section 20 of the Water Commission Act at which licensee was cited to show why said licenses should not be revoked, and in connection with Applications 9145, 9146, and 9147, under the provisions of Section 19 of the Water Commission Act upon the protests thereto. The hearing was held November 7, 1938, with due notice to parties in interest,

License No. 1 Should be Revoked

The State Water Commission functioning under Chapter 536, Statutes 1913, was, we believe, without authority to issue License No. 1 confirming rights initiated under Chapter 41, Statutes 1911. Furthermore this license purported to confirm a right to divert from Merton Creek whereas no right was initiated to the waters of that stream by the applications named as the basis for License No. 1. California - Engels Mining Company failed to appear at the hearing either in support of License No. 1 or in support of its protests against Applications 9145, 9146, and 9147. The reports filed by this company and the testimony presented at the hearing on November 7, 1938, indicate clearly that there has been no use by this company for more than three years from the sources or for the purpose named in Lights Creek No. 1 and Lights Creek No. 2 Applications upon which License No. 1 was based. Under the circumstances an order should now be entered revoking said license.

License No. 100 Should Be Revoked

California - Engels Mining Company, licensee under Application 86, License 100, likewise failed to appear in support of License 100 at the hearing on November 7, 1938. Reports filed by this company in connection with License 100 and statements made by said company in connection with its protest against Applications 9145, 9146, and 9147, as well as testimony given at the hearing on behalf of both these last named applicants and Enhorning and Harrison, indicate that there has been no use since 1930 as contemplated under Application 86, License 100. Under the circumstances it appears appropriate to

revoke said license also upon the grounds of non-use for more than 3 years.

Prior Rights In Morton Creek Probably Exist

There appears in License No. 1 the following significant statement:

"This plant was completed and complete use of the power made on December 19, 1914, prior to the appointment of the Water Commissioners and the license is therefore made effective as of that date"; etc.

This statement, and representations made from time to time on behalf of Engels Copper Mining Company and its successor in interest, the California-Engels Mining Company, as they appear in the records of the Division lead us to the conclusion that Protestants Enhorning and Harrison, through their lease from California - Engels Mining Company and the use of Morton Creek water begun before December 19, 1914, and continued since that time by California - Engels Mining Company and its predecessors, is entitled to divert for beneficial uses from Morton Creek. Testimony introduced at the hearing on November 7, 1938, indicates however that the use in recent years has been small.

Representatives of Rosalee Mining and Milling Company agreed to refrain from any interference with a continuation of such beneficial use as had been made in recent years by Enhorning and Harrison and indicated the remaining flow was susceptible of successful development and use under its Application 9147 to appropriate from this source.

C O N C L U S I O N

There has been no use for beneficial purposes for a period of more than three years under Licenses 1 and 100 and these licenses should therefore be revoked. There appears to have been some beneficial use of the waters of Morton Creek in recent years by Enhorning and Harrison for lumber milling purposes. The right to make such use is presumably based upon an appropriation made by Engels Copper Mining Company, predecessor in interest of California - Engels Mining Company before December 19, 1914, and continued since that time by the two companies and Enhorning and Harrison, lessees of mining claims of California - Engels Mining Company and their water right on Morton Creek. This right cannot have originated on either License 1 or License 100 because the latter were for power purposes at a point several miles distant. The use by Enhorning and Harrison in

