

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

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J. A. Lloyd

In the matter of Application 8065, Permit 4482, to appropriate from Quail Springs in San Bernardino County for mining and domestic purposes.

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Decision A 8065 - D - 399

Decided *March 8, 1937*

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APPEARANCES AT HEARING HELD FEBRUARY 2, 1937, at SACRAMENTO, CALIFORNIA

For Applicant
J.A. Lloyd

In propria persona

For Protestant
J. Bachert

In propria persona

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OPINION

GENERAL DESCRIPTION OF PROJECT

On February 21, 1935, the Division approved Application 8065 allowing an appropriation of 20,000 gallons per day from Quail Springs in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 22, Township 18 North, Range 1 East, S.B.B. & M. for mining and domestic purposes. By the terms of the permit it was prescribed that construction work should begin on or before May 1, 1935, should be prosecuted with reasonable diligence, that construction work should be completed on or before December 1, 1937, and that full beneficial use of the water should be made on or before December 1, 1938.

A progress report filed November 4, 1935, indicates that a tunnel at the spring had been cleaned out and run in 20 feet and that 600 feet of 1 inch pipe had been laid at a cost of \$100, but that development had been arrested since July 1, 1935, because of litigation over the property.

A progress report filed October 14, 1935, indicates that during the preceding 12 months some \$1,000 had been spent for labor and material in development of the property including opening up an old tunnel, construction of a reservoir, and running a pipe line some 200 feet from the tunnel to the reservoir.

On July 8, 1936, one John Bachert filed Application 8728 to appropriate 20,000 gallons per day from the same springs for the same purpose and this application was protested by J. A. Lloyd to whom Application 8065, Permit 4482, had been assigned. Mr. Bachert thereupon answered charging that Mr. Lloyd had not proceeded with reasonable diligence under Application 8065, Permit 4482, and he asked that said permit be revoked. The matter was accordingly set for hearing in Sacramento on February 2, 1936, at which Mr. Lloyd was cited to show cause why this permit should not be revoked upon the grounds of lack of diligence. Of this hearing the parties received due notice. Testimony presented at that time, and affidavits and documents which were filed with the Division, indicate as follows:

On or about April 29, 1935, Mr. Lloyd deeded to J. Bachert and E. Bachert (daughter) a one-half interest in a certain group of mining claims and water rights in the Quail Springs Mining District in Section 22, T. 18 N, R. 1 E., S.B.E. & M., including a one-half interest in Application 8065, Permit 4482, this deed being recorded April 30, 1935, in Book 1055 p. 258 records of San Bernardino County.

Friction arose between the partners and it appears that thereafter nothing in the way of financial support or labor was contributed by Mr. Lloyd toward development of the project. He excuses this upon the grounds that there was an informal oral understanding between the parties that in consideration of assignment of a one-half interest in the property Bachert was to proceed with development, install a mill, etc. Whatever the facts may be in this connection, however, the record indicates that Mr. Bachert on March 3, 1936, advertised a Notice of Forfeiture addressed to J. A. Lloyd under the provisions of Section 28, Title 30, U. S. Code, demanding payment of his proper share of an expenditure of \$1195 for labor and materials. This notice in part was to the effect that "if within 90 days after this notice of publication you fail or refuse to contribute your part or parts in labor and improvements mentioned to hold said group of claims your interest in all the said mining claims and personal property and improvements will become the property of the co-owners who have made the required expenditures."

Mr. Lloyd made no answer to this demand which notice was completed on or about June 10, 1936, and recorded June 15, 1936, in Book 1141 p 282, records of San Bernardino County. Apparently Mr. Lloyd has visited the property on two occasions only since that time and there has been no cooperation between the two parties. It would appear therefore that Mr. Lloyd has forfeited his residual one-half interest in Application 8065, Permit 4432, and has neither done anything during the past year nor is he now in a position to do anything toward development under this permit. By his own admission at the time of the hearing the development described and expenditures reported by him for the year 1936 in connection with the permit were

by Mr. Bachert, it being his contention that this was in accordance with his oral understanding and agreement with Bachert at the time he deeded to him a half interest in the property.

On November 14, 1936, Mr. Lloyd advised that his attorneys were then starting suit on the issues involved between himself and Mr. Bachert and the Division consented to suspend action waiting upon a determination of these issues provided the matter was diligently pressed. It was requested however that the Division be kept advised of the proceedings which were being taken.

On January 11, 1937, there being no evidence that suit had been filed a hearing was called as indicated above and at the time of this hearing on February 2nd, suit had not yet been instituted. Whatever the equities as between Bachert and Lloyd, and this is a matter for the courts to determine rather than this office, the fact is that the agreement described by Lloyd lacks that definite binding force and character which should characterize every substantial contract in that there is no penalty or forfeiture clause to cover failure to perform, and therefore in our view its existence cannot be advanced as evidence of reasonable diligence on the part of Lloyd, particularly in view of the denial by Bachert.

Mr. Lloyd was able to pay only a portion of his share of the cost of the hearing on February 2nd, but promised to remit the balance promptly upon receipt of statement. Such statement was mailed to him on February 10th. According to our latest advice he has not as yet paid this account, in fact a letter from him under date of February 4th stated that unexpected developments would make it impossible for him to pay the account for some time and he asked that this charge be remitted.

Both during the course of the hearing and prior thereto Mr. Lloyd indicated that he proposed to bring suit against Mr. Bachert, but we are not advised that such a suit has been instituted. Under the circumstances it is clear that the development proposed by Mr. Lloyd under this application and permit is not being pressed diligently.

O R D E R

It appearing to the Division after a hearing which was duly noticed under the provisions of Section 20 of the Water Commission Act (Chapter 586, Statutes 1913, as amended) that the permittee under Application 8055, Permit 4482, had failed to comply with the terms and conditions of said permit,

IT IS HEREBY ORDERED that Permit 4482 be revoked and cancelled upon the records of the Division of Water Resources without prejudice.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this *8th* day of *March*, 1937.

EDWARD HYATT, State Engineer

By HAROLD CONKLING
Deputy.

(Seal)
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