

Before the Division of Water Resources
Department of Public Works
State of California

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In the Matter of the Revocation of License 123 Heretofore Issued
in Confirmation of the Right of Nelle and Jessica Don Carlos
under Application 713, Permit 444 to Appropriate
Water from a Small Ravine in San Bernardino
County, Tributary to Big Bear Lake.

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Decision 713 D 451

Decided *December 29, 1939*

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APPEARANCES AT HEARING HELD AT SACRAMENTO, OCTOBER 24, 1939.

For Licensees

Nelle and Jessica Don Carlos

No appearance

EXAMINER: 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

On January 27, 1921, the right initiated by Nelle and Jessica
Don Carlos under Application 713 was confirmed by issuance of License 123
for an amount of water not to exceed 0.004 of a cubic foot per second from
a small ravine in San Bernardino County to be diverted from about June 1
to about November 30 of each season for domestic purposes at a summer set-
tage within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 22, T 2 N, R 1 W, S.B.D. & M.

Subsequent to issuance of license repeated attempts were made
by the Division to obtain from the licensees a report on the use of water
but correspondence addressed to them was returned unclaimed.

Having received no word from the licensees, the project was in-
spected by an engineer of the Division on July 26, 1926 who reported that
no one was residing on the place of use at the time. He was informed

however by the local postmaster that the cottage had been occupied at various times.

Failure to reach the licensees by correspondence again resulted in another inspection on July 2, 1928. At the time of this inspection no one was residing at the cottage but according to information obtained from the District Forest Ranger the place of use had been occupied intermittently throughout the year. There was no evidence of abandonment of the water right.

The first report from the licensees on the use of water under Application 713, License 123 was received by the Division on November 12, 1931. The report indicated that during the years 1929 and 1931 the cabin was occupied week ends by relatives of the family and that during the year 1930 Mrs. Melle Don Carlos and some friends resided at the cabin for three months.

On July 27, 1934, at the request of District Ranger Robe, an engineer of the Division again visited the project. According to Mr. Robe, the Don Carlos cabin had been occupied only occasionally for some three days at a time during the past two years but there were some 6 or 8 other cabins which were using the water under an agreement with Mrs. Don Carlos whereby they were paying her \$50.00 each for the privilege of using the water. One cabin owner had constructed a concrete reservoir just below the intake at a cost of \$100.00 from which the several pipe lines took out at different elevations according to the priorities of right allotted by Mrs. Don Carlos. None of the users however with the exception of Melle Don Carlos and Jessica Don Carlos had filed applications to appropriate this water and apparently considerable trouble had resulted as a result of the contract agreement and the apportionment of the water.

This report was verified by a report filed by the licensees on December 8, 1934, which in effect stated that water had been used during the past three years almost constantly for household purposes for from one to five families.

As it appeared that Mrs. Don Carlos had been receiving payment for water which she was not in a position to sell it was suggested by this office that the Forest Service ascertain the extent of existing rights as determined from the recent use of water under License 123 and if it were found that a substantial portion of the flow was subject to appropriation, that it file on the source and promote an Association of the present users.

Consequently on June 10, 1936, Application 8705, was filed by the U.S. San Bernardino National Forest and being unprotected was approved on September 16, 1936 by the issuance of Permit 4809 for an amount of water not to exceed 1600 gallons per day to be diverted from Don Carlos Spring from about May 1 to about October 31 of each season for domestic purposes on Lots 60, 61, 62, 63, 64, 65, 66, and 446 of Big Bear Tract within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 22, T 2 N, R 1 W, S.B.E. & M.

On November 21, 1938, the use of water under Application 8705, Permit 4809 was reported complete and on June 28, 1939 the project was inspected by an engineer of the Division who reported that a flow of 1400 gallons per day had been developed for the service of 11 cabins including the cabin of Mrs. Don Carlos which was located on Lot 63 of the Big Bear Tract.

According to the report, water was diverted at a point some 60 feet above the point of diversion from which the supply had been obtained under License 123 and the new development had completely cut off the supply at the lower point of diversion.

Under date of July 25, 1939 Mrs. Don Carlos was informed of these facts and it was suggested that she request the revocation of License 123 inasmuch as it appeared that for some time she had been obtaining water under Application 8705, Permit 4809 at the upper point of diversion instead of under License 123 at the lower point of diversion and as she had apparently received satisfactory service from the upper development no purpose could be seen in maintaining further the rights claimed under the license.

As no reply was received from Mrs. Don Carlos the matter was set for hearing at Sacramento in accordance with Section 20 of the Water Commission Act on Tuesday October 24, 1939. Of this hearing licensees were duly notified. Under date of October 22, 1939, Mrs. Nello Don Carlos advised this office that she would be unable to attend the hearing on account of illness and that her daughter Jessica Don Carlos Mooney would be unable to attend on account of business. Consequently no appearances were made at the hearing.

This office was advised by the Forest Supervisor under date of November 10, 1939 that during the month of July 1938 all pipes were disconnected from the lower spring and all use of water since that time had been made from the upper spring under Application 8705, Permit 4809 of the Forest Service.

It therefore appears that the spring named in Application 713, Permit 444, License 123 has been abandoned as a source of supply and revocation of License 123 is in order.

ORDER

License 123 having heretofore been issued confirming the right under Application 713, Permit 444 to the appropriation of 0.004 of a cubic foot per second from about June 1 to about November 30 from a small ravine

in San Bernardino County for domestic purposes; it appearing to the Division that such right had become forfeited by abandonment and that licensees are now obtaining their water supply under Application 8705, Permit 4809 of the U.S. San Bernardino National Forest; a hearing in the matter of revocation of said license having been held in the matter at which no appearances were made on behalf of said licensees, and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that said License 123 be revoked and cancelled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 29 day of Dec. 1939.

EDWARD HEATT, State Engineer

By HAROLD CONKLING
Deputy

(Seal)

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