

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

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IN THE MATTER OF APPLICATION NUMBER 4656 OF J. T. RAMSEY  
TO APPROPRIATE FROM ZENTORAF SPRING, TRIBUTARY TO  
SWEETWATER CREEK IN EL DORADO COUNTY FOR  
IRRIGATION AND DOMESTIC PURPOSES

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DECISION NO. 4656 D 110

Decided June 11, 1926

APPEARANCES AT HEARING HELD February 16, 1926.

For Applicant:

J. T. Ramsey

In propria persona

For Protestant:

Louis Klumpp

Butler, VanDyke & Desmond  
by Mr. Van Dyke

EXAMINER: Edward Hyatt, Jr., Chief of Division of Water Rights

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O P I N I O N

Application Number 4656 was filed June 25, 1925. It proposes an appropriation of 0.01 cubic foot per second throughout the entire year for domestic purposes and the irrigation of 10 acres of land. It was protested by Louis Klumpp.

The application was completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights, and being protested was set for a public hearing at 707 Forum Building, Sacramento at 10:00 o'clock A.M. on February 16, 1926. Of this hearing applicants and protestant were duly notified.

The protest of Louis Klumpp was filed on September 23, 1925. It is based upon a claim that the protestant and his predecessors in interest have used continuously all of the water from the Spring for 60 years for irrigation, domestic and stockwatering purposes and alleges in effect that the approval of the application would deprive him of the use of water to which he is lawfully entitled as the entire flow is appropriated by him and that he has paid taxes on the right to use the water.

In reply to the protest Mr. Ramsey states that the spring is located about 60 feet from his house and is on land that he pays taxes on, that the water from the spring has not been used for any purpose during the last six years but has been allowed to run to waste during this period and is therefore unappropriated under Section 20a of the Water Commission Act.

From testimony presented at the hearing the facts appear as follows:

The spring from which the applicant seeks to appropriate is located about 60 feet from his residence on a road about 5 miles from Escus and about Midway between Folsom and Placerville. This road is a portion of the land assessed to the applicant and upon which he pays taxes although for the past 60 years it has been used continuously as a public highway.

The spring was developed by Jacob Zengraff, father-in-law of the protestant Mr. Klumpp, prior to 1871 and the water piped to his residence and winery where it was used continually for domestic, garden irrigation and stock watering purposes up to the time that Mr. Klumpp came into possession of the property about eighteen years ago. This use continued until about four or five years ago when a portion of the pipe became clogged with roots and was in such bad condition that the pipe line was out about 150 feet from the spring and the water allowed to flow into a ravine and thence to Sweet-

water Creek where the water was made available for stockwatering purposes by means of pools in the stream bed.

The applicant took up his residence in that locality on June 1, 1919, and shortly after noticed that one of Mr. Klumpp's employees had cut the pipe line, allowing the water from the spring to flow into Sweetwater Creek presumably to waste, and as it appeared to him that no beneficial use had been made of the water since that time, he was of the opinion that the right of the protestant had been forfeited through non-use under Section 20a of the Water Commission Act and filed an application on the waters of the spring.

The fact brought out at the hearing that the protestant had leased his property almost continuously since 1922 for stock grazing purposes and that the sole source of supply for watering the stock during the summer months was from this spring, would appear to indicate that some beneficial use had been made of the water. In fact the protestant stated that if it were not for the waters of this spring he would not be able to lease his lands for stock grazing purposes.

From testimony presented at the hearing it would appear that due to the fact that the waters of the spring are naturally tributary to Sweetwater Creek above the protestant's property the protestant may have a riparian right to these waters which in such is the case could only be forfeited under Section 11 of the Water Commission Act by a ten year period of non-use.

Relative to the amount of water which flows from the spring, testimony was presented to the effect that on February 14th of this year the amount was 7 gallons per minute which usually decreased to about half this amount during the summer months. The applicant stated that during one summer he had measured the flow and found that it was about 1 gallon per minute.

On May 23, 1926, an engineer of this office visited the proposed source of diversion and from his report it would appear that the Zentgraff Spring is located on a water bearing strata which extends through the property of Mr. Ramsey. Along this strata there are numerous other springs which furnish a water supply to the applicant for domestic and irrigation purposes.

One of these springs is located about 15 or 20 feet easterly and just across the road fence from the Zentgraff Spring and any diversion from either of these springs affects the flow from the other. In fact they are in reality a single spring. At the time of the inspection there was a flow of about 3 gallons per minute from this easterly spring which was being used by Mr. Ramsey for the irrigation of a vegetable garden near his house.

Water was being conducted from the Zentgraff spring by means of an  $1\frac{1}{2}$  inch pipe and a  $3/4$  inch pipe a distance of approximately 600 feet to the old Zentgraff home now owned by Louis Klupp and discharged into a wooden circular vat 3 feet in diameter and  $2\frac{1}{2}$  feet deep which was set upon the ground near the house. The flow from the  $3/4$  inch pipe into the vat was found to be at the rate of  $3/8$  of a gallon per minute. The water ran over the side of the vat into a small swampy area and was then either lost by evaporation or passed into Sweetwater Creek by seeping through the ground. The tank was about 100 feet from the Creek. It was estimated that the flow of Sweetwater Creek in the vicinity of the house was about 0.20 cubic feet per second.

As the pipe line was of insufficient capacity to convey the entire flow of the spring, the overflow from the spring which was found by measurement to be  $1\frac{1}{2}$  gallons per minute passed down the easterly side of the road for a distance of about 150 feet, entered a small ravine on Mr. Klupp's property where it found its way to Sweetwater Creek, also on Mr. Klupp's property.

An inspection of the property of Mr. Klupp revealed the fact that there were a number of springs thereon which would appear to furnish an adequate supply to the protestant for domestic and stockwatering purposes especially if they were properly developed.

The Klupp ranch had the appearance of being abandoned, no one was occupying the house, there were no signs of any stock on the property and at the time of the inspection no beneficial use was being made of the water.

From the information presented at the hearing and the report of the inspecting engineer it would appear that the use of water from the spring during the last few years if any had been a very desultory one and if claimed under an appropriative right alone might be forfeited in whole or in part under Section 20a of the Water Commission Act.

However, it would appear that the protestant has a riparian claim on the spring which could be forfeited only during a period of non-use extending over ten years in accordance with Section 11 of the Water Commission Act. Evidence presented at the hearing indicates that during the last ten years beneficial use had been made of the water for stockwatering, domestic and garden irrigation purposes and therefore the claim of riparian right was still valid.

There appears to be <sup>a</sup>certain amount of water in the Zentgraf Spring which is unappropriated and therefore application Number 4656 should be approved with the understanding that the diversion works of the protestant should not be interfered with and that the protestant should be allowed to continue the diversion to beneficial use which he has in the past enjoyed.

ORDER

Application Number 4658 for permit to appropriate water having been filed with the Division of Water Rights as above stated, a protest having been filed, a public hearing having been held and the Division of Water Rights now being fully informed in the premises

IT IS HEREBY ORDERED that said application be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento, this 11th day of June 1928.

EDWARD HYATT, JR.

(Edward Hyatt, Jr.)

CHIEF OF DIVISION OF WATER RIGHTS

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