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

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IN THE MATTER OF APPLICATIONS 3389-3390-3391-3392 OF  
ALFRED GIRAUD TO APPROPRIATE WATER FROM WILD HORSE, BED-  
ROCK, EATON AND SUNDAY SPRINGS, RESPECTIVELY, IN INYO COUNTY  
FOR STOCK WATERING PURPOSES

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Decision No. 3389 - 3390 - 3391 - 3392 D 189.

Decided April 9, 1928

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Appearances at Hearing held in Sacramento, March 13, 1928.

For Applicant: No appearance.

For Protestant: No appearance.

Examiner: E. M. Bryan, Deputy Chief of Division

O P I N I O N

On April 30, 1923, Alfred Giraud filed four applications, proposing the appropriation of 0.006 second foot from each of Wild Horse and Bed-rock Springs and 0.003 second foot from each of Eaton and Sunday Springs for stock watering purposes. In the cases of Applications 3389, (Wild Horse Spring), 3390, (Bed-rock Spring), and 3392, (Sunday Spring), applicant now controls the land surrounding under patent and the place of use is on the lands. Eaton Spring, specified in Application 3391, is located on the public domain, and water would be conducted therefrom some 250 feet to a trough on land patented to applicant. The applications were protested by Walter Palmer.

These several applications were 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, were set for a public hearing at 2:00 o'clock P.M. on Tuesday, March 15, 1922, in Room No. 1026 Sun Finance Bldg., Los Angeles, Calif., and notices duly sent to applicant and protestant. When it became apparent that neither would be represented, the hearing was transferred to Sacramento, notices of transfer being sent to all parties at interest. No appearance was made by either, but the Division of Water Rights considers available information sufficient as a basis for decision on the several applications.

The protest by Walter Palmer recites that the land at each of the springs is mining land and covered by his mining locations and that applicant is therefore unable to secure right of access to the several springs. Protestant's only statement of use is "Said water has been used on several occasions by me in connection with the work of development and assessment work on the mining locations above referred to". Apparently the use of water by *protestant* has been infrequent and not extensive. The controversy therefore is entirely over the matter of control of land.

Subsequent to filing his applications, applicant has secured patents to lands surrounding three of the four springs and has stated his intention to petition the U. S. Land Office to "clear-list" the fourth spring. Protestant seeks to cloud the validity of the patents by stating same were fraudulently secured but has submitted no data in support of this contention. On the other hand, applicant has filed certified copies of the patents on which he bases his claim to control the lands and stated that an engineer for the Land Office visited the properties and reported thereon. Attorney for applicant states definitely that "The entry would

not have been allowed by the General Land Office had the land been deemed to be mining property". It therefore appears that the U. S. Land Office, whose jurisdiction in such matters is not open to question, has decided the question of right of way in applicant's favor. Certainly Section 9 of the Stock Raising Homestead Act of December 29, 1916 (39 Stat. 662) cannot be urged by protestant as denying to applicant the right to enter on his patented land, even though Palmer has valid mining locations.

The question of control of land at the fourth (Eaton) spring will in all probability eventually also be decided by the action of the Land Office on applicant's petition for clear-listing. Action on this application will accordingly be deferred for the present.

The various springs are so situated that all or any part of applicant's stock might water from any of them at any time. While no information has been submitted by the applicant as to the number of stock to be watered, it would appear that 3900 gallons per day, which is the largest amount to be appropriated from any one spring, is not excessive for use in connection with stock raising on an extensive scale.

#### O R D E R

Applications Nos. 3389, 3390, 3391 and 3392 for permits to appropriate water having been filed with the Division of Water Rights as above stated, 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 Applications 3389, 3390 and 3392 be approved and that permits be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

IT IS FURTHER ORDERED that, pending action of the U. S. Land Office on applicant's petition for clear-listing of the land surrounding

Hatch Spring, action on Application 3391 be deferred. If and when applicant's petition is granted by the U. S. Land Office, Application 3391 will be approved and a permit thereon granted to the applicant subject to such of the usual terms and conditions as may be appropriate. If the petition to the Land Office is denied, Application 3391 will be denied.

Dated at Sacramento this 9th day of Apr., 1928.

(Harold Conkling)  
CHIEF OF DIVISION OF WATER RIGHTS

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