

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
BEFORE THE STATE ENGINEER AND
CHIEF OF THE DIVISION OF WATER RESOURCES

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In the Matter of Revocation of Licenses 440 and 1171 Heretofore Issued in Confirmation of the Rights Initiated under Applications 460 and 4154, Permits 344 and 2167 of Augusta Kuenzel to appropriate from an unnamed spring, from Cottonwood Canyon, from Cottonwood Spring and from Canyon Spring, in Los Angeles County, for Domestic Purposes and Irrigation.

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Decision A. 460 and A. 4154 D. 608
Decided July 15, 1949

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APPEARANCES AT HEARING HELD AT LOS ANGELES, MARCH 17, 1949 AND APRIL 25, 1949:

For Licensee

Augusta Kuenzel

In person

Richard P. Variel of the law firm of
Cannon & Callister

For an Interested Party

Thomas J. Buchanan

In person

For the State Engineer

Gordon Zander, Principal Hydraulic Engineer in Charge of Water Right Administration, Division of Water Resources, Department of Public Works, State of California.

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OPINION

On December 30, 1925, License 440 was issued to Simon Kuenzel confirming his water right initiated under Application 460, (filed September 14, 1916) to an amount of water not to exceed 0.04 cubic foot per second to be diverted from an unnamed spring within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 22, T 4 N, R 8 W, S.B.B. & M.

and from Cottonwood Canyon at a point within the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of said Section 22; the water to be used from about March 1 to about September 30 of each season for irrigation of 3.5 acres within the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 7, T 4 N, R 7 W, S.B.B. & M. and for domestic purposes at the same place throughout the year as required.

On April 8, 1932, License 1171 was issued to Simon Kuenzel confirming his right initiated under Application 4154 (filed August 13, 1924) to an amount of water not to exceed 0.02 cubic foot per second to be diverted from Cottonwood Spring and Canyon Spring, both springs being located within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 22, T 4 N, R 8 W, S.B.B. & M., the water to be diverted throughout the year for irrigation and domestic purposes on the same place of use as described in Application 460, License 440. A special clause was incorporated in License 1171 which reads as follows:

"The maximum quantity of water found to have been put to beneficial use by means of the diversion works described in Applications 460 and 4154 does not exceed and therefore the license shall not be construed to confirm in licensee a right to divert, by means of such diversion works, a total quantity of water in excess of 0.04 cubic foot per second or approximately 26,000 gallons per day."

Simon Kuenzel died in 1940 and on August 24, 1942, under probate proceedings the property was set aside to his widow Augusta Kuenzel. By deed dated August 3, 1942 and recorded August 14, 1942, Augusta Kuenzel transferred an undivided one-half interest in said property to Maude A. Grettenberg, reserving to herself a three acre parcel which is the tract upon which Mrs. Kuenzel's house was located and which apparently is the place of use described in the two water filings. Subsequently Mrs. Kuenzel filed an action, Augusta Kuenzel v. Maude Grettenberg, et al., Superior Court, San Bernardino County, No. 53123 by which she sought to have the deed set aside. Judgment in the matter was in favor of the defendant, and upon appeal was confirmed by the District Court of Appeal,

Fourth District, California. The judgment became final on January 13, 1949 and in accordance therewith Maude A. Grettenberg is the owner of an undivided one-half interest in the Kuenzel Property. No mention in the final judgment was made of the reservation of the 3 acre tract reserved by Mrs. Kuenzel in the deed of August 3, 1942.

The records of this office indicate that use of water was made under said licenses up to the time of Simon Kuenzel's death in 1940. Thereafter reports filed by his successor Augusta Kuenzel on November 9, 1942 and January 2, 1946 and reports of inspections of the project made by engineers of the Division in 1944, 1945, and 1946 show that water was not used on the project subsequent to 1940. Licensee's attention was called to the non-use of water on various occasions throughout this period, however, no action was taken by the Division to revoke the licenses because necessity for such action was not then apparent.

On June 12, 1946, Thomas J. Buchanan filed Application 11434 to appropriate 140 gallons per minute from Cottonwood and Canyon Springs within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 22, T 4 N, R 8 W, S.B.B. & M. and 70 miner's inches from Jesus Creek at a point within the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of said Section 22. This application was protested by Augusta Kuenzel.

The appropriations contemplated under Application 11434 and those of Protestant Augusta Kuenzel under Applications 460 and 4154, Licenses 440 and 1171, respectively, are from the same sources. It is apparent that the flows of said sources are not sufficient to supply all of the aforesaid appropriations.

From the reports hereinabove mentioned it appeared that the filings of protestant Augusta Kuenzel may have been forfeited through non-use. In view of these circumstances Application 460, License 440 and Application 4154, License 1171 were set for hearing in accordance with the provisions of Section 1675 of the State Water

Code on March 17, 1949 at 10:00 o'clock A.M. in Room 803, California State Building, Los Angeles, California and continued to the same time and place on April 25, 1949. Of this hearing all parties at interest were duly notified.

The preponderance of testimony at the hearings held on March 17 and April 25, 1949, clearly shows a failure to apply the water under the project to beneficial use for the entire period of years subsequent to 1940.

In defense the licensee in her various reports mentioned above and in the testimony given by her and on her behalf at said hearings has cited illness, the scarcity of labor and materials during the war, and litigation with Maude A. Grettenberg as extenuating circumstances which prevented repair of her pipe line and application of the water to the beneficial purposes in accordance with the terms and provisions of the hereinbefore mentioned licenses.

The physical situation in the matter appears to be that the pipe line as originally installed was of used boiler tubing joined together with rubber inner tubing; that sections of the pipe have rusted through and are useless; and that other sections have been washed out by floods or are otherwise entirely missing. In all it appears that the entire pipe line needs replacing and that such effort as has been put forth by Mrs. Kuenzel in the maintenance of her water system was insignificant in comparison with the labor that was required to keep the system in operating condition.

The record further discloses that there is an urgent and growing need for water in the locality; that Mr. Buchanan under his Application No. 11434 is ready to proceed with the development of such a water supply; but that such development is necessarily held in abeyance until the validity of Mrs. Kuenzel's

Licenses 440 and 1171 has been determined.

In summary it is apparent that for a period of 8 years last past licensee has failed to beneficially use any part of the water appropriated under Applications 460 and 4154, as confirmed by Licenses 440 and 1171, respectively and that such attempts as have been made by licensee to maintain her water system in operating condition have not been commensurate with the task involved.

On the other hand it appears that Thomas Buchanan, under his Application 11434, stands ready to develop and put to beneficial use water from the sources named in the Kuenzel filings, but that the water available therefrom is not adequate to supply both the Kuenzel and Buchanan projects.

It is concluded that licensee Augusta Kuenzel having failed to beneficially use all or any part of the water claimed by her under Applications 460 and 4154, Licenses 440 and 1171, respectively, for a period of three years, such unused waters have reverted to the public and shall be regarded as unappropriated public water.

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ORDER

Licenses 440 and 1171 having been heretofore issued confirming, respectively, the right under Application 460 to the appropriation, from an unnamed spring and Cottonwood Canyon in Los Angeles County, of 0.04 cubic foot per second from about March 1 to about September 30 of each season for agricultural and domestic uses and throughout the remainder of the year as required for domestic

purposes, and the right under Application 4154 to the appropriation of 0.02 cubic foot per second throughout the year from Cottonwood Spring and Canyon Spring in Los Angeles County for domestic and irrigation uses; it appearing to the Division of Water Resources that such rights have become forfeited under the provisions of Section 1241 of the State Water Code; a hearing in the matter of revocation of said licenses having been held of which the licensee received due notices; and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that said Licenses 440 and 1171 be revoked without prejudice 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 15th day of July, 1949.

EDWARD HYATT, STATE ENGINEER

By

A. D. Edmonston

A. D. Edmonston
Assistant State Engineer



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