

IN THE MATTER OF APPLICATIONS NOS. 12784, 12785, 12845, 13215, 13216, 13283, 13284, 13287, 13288, 13289, 13309, 13310, 13311, 13312, 13313, 13314, 13315, 13316, 13317, 13318, 13323, 13324, 13365, and 13517 FILED BY JAMES M. DANIELS FOR STOCKWATERING PURPOSES AND WHICH WERE PROTESTED BY VARIOUS PROTESTANTS:

AND

APPLICATION NO. 11873 FILED BY MRS. J. M. BUTLER

: RULING

AND

APPLICATIONS NOS. 13467, 13468, 13625, AND 13679 FILED BY JOHN J. CASEY FOR STOCKWATERING PURPOSES AND WHICH WERE PROTESTED BY VARIOUS PROTESTANTS.

NOTE: See attached sheet for detail of each application.

A hearing was held at Tonopah, Nevada, November 13, 14 and 15, 1951 on the above listed applications. Testimony was given by several witnesses for each of the contesting parties and the entire record transcribed. In addition to the record obtained at the hearing, the State Engineer examined the official files in his office which pertain to the area in controversy. No field investigation was made as the entire area has been visited many times.

FINDINGS:

1.

Mr. John J. Casey is successor in interest to the rights acquired and consolidated by the United Cattle and Packing Co. and the Butler Estate.

2.

Mr. James M. Daniels is successor in interest to a portion of the rights originally established by the Kawich Cattle Company during the year 1912 and to the rights acquired and consolidated by Mr. Chris Dahlstrom.

3.

By Executive Orders No. 9019 dated January 12, 1942; and No. 9086 dated Nov. 4, 1942; and PLO 712 dated April 16, 1951, that portion of the range area in controversy which lies south of the Mount Diablo Base and Meridian has been withdrawn from public use and is under the jurisdiction of the Department of Defense. Subsequent to Executive Orders 9019 and 9086, but prior to PLO 712, co-use agreements were entered into between the Government and both Mr. Daniels and Mr. Casey. The areas covered in the co-use agreements are shown on reduced photostats of Army Exhibit #1, attached.

4.

Except for the area south of the First Standard Parallel South the Army Exhibit #1 depicts quite accurately the range boundary between Mr. Casey and Mr. Daniels.

5.

The range area in the vicinity and south of the First Standard Parallel South is winter range and has been used as such by all the stockmen in the area.

6.

Between the years 1925 and 1929 the Kawich Cattle Company sold all their stock and removed them from the range. In 1929 A. M. Johnson purchased the remaining assets of the Kawich Cattle Company, including all range and water rights. Later during the same year Johnson purchased some horses from Johnny Pass, an Indian, and some horses, mules and range rights from W. M. and W. T. Cunningham. These horses and mules were ranging in the same area as was ranged by the Kawich Cattle Company. Until 1931 Johnson employed Pass and Cunningham to look after the horses and mules. In that year he leased his range to Chris Dahlstrom and no longer regularly employed anyone to look after the horses. Mr. Dahlstrom moved cattle into the western portion of the old Kawich Cattle Company range in the vicinity of Cactus Spring, Antelope Spring and Salsbury Tank and continued to run about 300 cattle there, even though his lease had expired, until he sold to Daniels. During this period from 100 to 150 head of Johnson's horses and mules continued to graze in this area.

7.

The range area from approximately the First Standard Parallel South northerly to about Five Mile has been used exclusively by Mr. Casey and his predecessors except for a normal and uncontrollable drift of cattle into the area.

In accordance with the Findings the State Engineer makes the following ruling on each separate application:

RULING

Application 12784 was filed by James M. Daniels on Dec. 31, 1948 for the waters of Alkali Spring and informally protested by J. J. Casey. The protest is overruled and a permit will be issued upon receipt of the statutory fee.

Application 12785 was filed by James M. Daniels on Dec. 31, 1948 for the waters of Cactus Spring and informally protested by J. J. Casey. The protest is overruled and a permit will be issued upon receipt of the statutory fee.

Application No. 12845 was filed by James M. Daniels on Mar. 11, 1949 for Flood Waters and was protested by the Corps of Engineers and informally protested by J. J. Casey. This application is denied on the grounds that it will interfere with the customary range use in the area of the proposed appropriation.

Application 13215 was filed by James M. Daniels on Dec. 30, 1949 for underground water (Well No. 1) and was protested by John Jay Casey. This application is denied on the grounds that it will interfere with the customary range use in the area of the proposed appropriation.

Application 13216 was filed by James M. Daniels on Dec. 30, 1949 for underground water (Well No. 2) and was protested by John Jay Casey. This application is denied on the grounds that it will interfere with the customary range use in the area of the proposed appropriation.

Application 13283 was filed by James M. Daniels on March 6, 1950 for the waters of Pillar Spring and was protested by John Jay Casey. The protest is overruled; however, no permit will be issued pending determination of existing rights on the source.

Application 13284 was filed by James M. Daniels on Mar. 6, 1950 for underground waters (Desert Well). This application was not protested and a permit will be issued on receipt of the statutory fee.

Application 13287 was filed by James M. Daniels on Mar. 6, 1950 for underground waters (Salsbury Well in Gold Flat) and was protested by John Jay Casey. This application is denied on the grounds that it will interfere with the customary range use in the area of the proposed appropriation.

Application 13288 was filed by James M. Daniels on March 6, 1950 for the waters of Antelope Spring and was protested by John Jay Casey. The protest is overruled and a permit will be issued upon receipt of the statutory fee; however, the number of stock will be limited to 300 cattle and 15 horses.

Application 13289 was filed by James M. Daniels on Mar. 6, 1950 for underground water (Gold Crater Well). A permit will be issued upon receipt of the statutory permit fee.

Application 13309 was filed by James M. Daniels on Mar. 15, 1950 for the waters of Five Mile Spring and was protested by John Jay Casey. The application is denied on the grounds that it would interfere with the customary range use in the area of the proposed appropriation.

Application 13310 was filed by James M. Daniels on March 15, 1950 for underground waters (Well No. 1) and was protested by John Jay Casey. The protest is upheld and the application denied on the grounds that the granting of a permit would interfere with existing rights.

Application 13311 was filed by James M. Daniels on March 15, 1950 for underground waters (Well No. 2) and was protested by John Jay Casey. The protest is upheld and the application denied on the grounds that the granting of a permit would interfere with existing rights.

Application 13312 was filed by James M. Daniels on March 15, 1950 for underground waters (Well No. 3) and was protested by John Jay Casey. The protest is upheld and the application denied on the grounds that the granting of a permit would interfere with existing rights.

Application 13313 was filed by James M. Daniels on March 15, 1950 for the waters of Haws Canyon Creek and was protested by John Jay Casey. The protest is upheld and the application is denied on the grounds that the granting of a permit would interfere with existing rights.

Application 13314 was filed by James M. Daniels on March 15, 1950 for the waters of Breen Spring and was protested by John Jay Casey. The protest is upheld and the application is denied on the grounds that the granting of a permit would interfere with existing rights.

Application 13315 was filed by James M. Daniels on March 15, 1950 for the waters of Silver Bow Spring and was protested by John Jay Casey and the Corps of Engineers. The protests are upheld and the application denied on the grounds that the granting of a permit would interfere with existing rights.

Application 13316 was filed by James M. Daniels on March 15, 1950 for the waters of Corral Spring and was protested by John Jay Casey and the Corps of Engineers. The protests are upheld and the application denied on the grounds that the granting of a permit would interfere with existing rights.

Application 13317 was filed by James M. Daniels on March 15, 1950 for the waters of Rose Spring and was protested by John Jay Casey and the Corps of Engineers. The protests are upheld and the application denied on the grounds that the granting of a permit would interfere with existing rights.

Application 13318 was filed by James M. Daniels on March 15, 1950 for the waters of Granite Spring and was protested by John Jay Casey and the Corps of Engineers. The protests are upheld and the application denied on the grounds that the granting of a permit would interfere with existing rights.

Application 13323 was filed by James M. Daniels on March 20, 1950 for underground waters (Twin Mills) and was protested by John Jay Casey. The protest is upheld and the application denied on the grounds that the granting of a permit would interfere with existing rights.

Application 13324 was filed by James M. Daniels on March 20, 1950 for the waters of Coyote Spring and was protested by John Jay Casey. The protest is upheld and the application is denied on the grounds that the granting of a permit would interfere with existing rights.

Application 13365 was filed by James M. Daniels on May 3, 1950 for underground water (Sulphide Well) and was protested by John Jay Casey. The protest is overruled and a permit will be issued upon receipt of the statutory fee.

Application 13517 was filed by James M. Daniels on October 11, 1950 for the waters of Stinking Spring and was protested by John Jay Casey. The protest is upheld and the application is denied on the grounds that the granting of a permit would interfere with existing rights.

Application 11873 was filed by Mrs. J. M. Butler on June 13, 1947 for underground water and was protested by A. M. Johnson. The application was assigned to John Jay Casey on June 8, 1948. James Daniels is successor in interest to A. M. Johnson. The application is denied on the grounds that it will interfere with the customary range use in the area of the proposed appropriation.

Application 13467 was filed by John J. Casey on August 25, 1950 for the waters of Antelope Spring and was protested by James Daniels and the Corps of Engineers. The application is denied on the grounds that the granting of a permit would interfere with existing rights.

Application 13468 was filed by John J. Casey on August 25, 1950 for underground water (Sulphide Well) and was protested by James Daniels and the Corps of Engineers. The application is denied on the grounds that the granting of a permit would interfere with existing rights.

Application 13625 was filed by John J. Casey on January 29, 1951 for the waters of Silver Bow Spring and was protested by James Daniels. The protest is overruled and a permit will be issued upon receipt of the statutory fee.

Application 13679 was filed by John J. Casey on April 12, 1951 for underground water (Melan Well) and was protested by James Daniels. The protest is overruled and a permit will be issued upon receipt of the statutory fee.

Respectfully submitted,

HUGH A. SHAMBERGER
State Engineer

By

Edmund Muth

EDMUND MUTH
Assistant State Engineer

Dated this 2nd day of January, 1953.

APPLICATIONS FILED BY JAMES M. DANIELS FOR STOCKWATER

APP. NO.	DATE	NAME OF SOURCE	POINT OF DIVERSION			PROTESTANT	ACTION
			Sec.	Twp.	Range		
12784	12-31-48	Alkali Spring	SW $\frac{1}{4}$ NW $\frac{1}{4}$	5 3 S.	46 E.	Casey-informal; Army-withdrawn	Approved
12785	12-31-48	Cactus Spring	SE $\frac{1}{4}$ NW $\frac{1}{4}$	34 2 S.	46 E.	Casey-informal; Army-withdrawn	Approved
12845 ¹⁴⁸	3-11-49	Flood Waters	SW $\frac{1}{4}$ SW $\frac{1}{4}$	7 3 S.	48 E.	Casey-informal; Corps of Eng.	Denied
13215 ¹⁴⁷	12-30-49	Und. (Gold Flat #1)	SE $\frac{1}{4}$ SE $\frac{1}{4}$	9 6 S.	48 E.	J. J. Casey	Denied
13216 ¹⁴⁷	12-30-49	Und. (Gold Flat #2)	SW $\frac{1}{4}$ NW $\frac{1}{4}$	2 6 S.	49 E.	.....do.....	..do..
13283 ²²⁸	3--6-50	Pillar Spring	NE $\frac{1}{4}$ NE $\frac{1}{4}$	10 8 S.	47 E.	.....do.....	No Action
13284 ¹⁴⁵	3--6-50	Und. (Desert Well)	NE $\frac{1}{4}$ SE $\frac{1}{4}$	15 4 S.	45 E.	No Protest	Approved
13287 ²²⁸	3--6-50	Und. (Salsbury Well)	SW $\frac{1}{4}$ NW $\frac{1}{4}$	18 6 S.	48 E.	J. J. Casey	Denied
13288 ¹⁴⁸	3--6-50	Antelope Spring	SW $\frac{1}{4}$ NW $\frac{1}{4}$	4 4 S.	47 E.	.....do.....	Approved
13289 ¹⁴⁵	3--6-50	Und. (Gold Crater Well)	SE $\frac{1}{4}$ SW $\frac{1}{4}$	36 4 S.	45 E.	No Protest	Approved
13309 ¹⁴⁸	3-15-50	Five Mile Spring	SW $\frac{1}{4}$ NE $\frac{1}{4}$	6 3 N.	48 E.	J. J. Casey	Denied
13310 ¹⁴⁹	3-15-50	Und. (Well No. 1)	NW $\frac{1}{4}$ NE $\frac{1}{4}$	30 1 N.	47 E.	.....do.....	..do..
13311 ¹⁴¹	3-15-50	Und. (Well No. 2)	SE $\frac{1}{4}$ SW $\frac{1}{4}$	31 1 N.	46 E.	.....do.....	..do..
13312 ¹⁴⁹	3-15-50	Und. (Well No. 3)	SE $\frac{1}{4}$ NW $\frac{1}{4}$	9 1 N.	40 E.	.....do.....	..do..
13313 ¹⁴⁹	3-15-50	Haw's Canyon Creek	SE $\frac{1}{4}$ NE $\frac{1}{4}$	30 2 N.	49 E.	.....do.....	..do..
13314 ¹⁴⁸	3-15-50	Breen Spring	NE $\frac{1}{4}$ SE $\frac{1}{4}$	22 1 N.	49 E.	.....do.....	..do..
13315 ¹⁴⁸	3-15-50	Silver Bow Spring	SW $\frac{1}{4}$ SE $\frac{1}{4}$	4 1 S.	49 E.	.....do.....	..do..
13316 ¹⁴⁷	3-15-50	Corral Spring	NE $\frac{1}{4}$ NE $\frac{1}{4}$	9 2 S.	50 E.	J. J. Casey- Corps of Eng.	..do..
13317 ¹⁴⁷	3-15-50	Rose Spring	SE $\frac{1}{4}$ SE $\frac{1}{4}$	24 2 S.	50 E.	J. J. Casey- Corps of Eng.	..do..
13318 ¹⁵¹	3-15-50	Granite Spring	NE $\frac{1}{4}$ NE $\frac{1}{4}$	12 4 S.	50 E.	J. J. Casey- Corps of Eng.	..do..
13323 ¹⁴⁹	3-20-50	Und. (Twin Mill Well)	SE $\frac{1}{4}$ SE $\frac{1}{4}$	34 2 N.	47 E.	J. J. Casey	..do..
13324 ¹⁴⁹	3-20-50	Coyote Spring	SW $\frac{1}{4}$ NW $\frac{1}{4}$	14 2 N.	47 E.	.....do.....	..do..
13365 ¹⁴⁷	5--3-50	Und. (Sulphide Well)	SW $\frac{1}{4}$ NW $\frac{1}{4}$	21 4 S.	47 E.	.....do.....	Approved
13517 ¹⁴⁹	10-11-50	Stinking Spring	SW $\frac{1}{4}$ NW $\frac{1}{4}$	32 1 N.	49 E.	.....do.....	Denied

APPLICATIONS FILED BY OR IS OWNED BY JOHN JAY CASEY FOR STOCKWATER

APP. NO.	DATE	NAME OF SOURCE	POINT OF DIVERSION			PROTESTANT	ACTION
			Sec.	Twp.	Range		
11873 ¹⁴⁷	76-13-47	Underground	SW $\frac{1}{4}$ SE $\frac{1}{4}$	9 6 S.	48 E.	A. M. Johnson (J. M. Daniels)	Denied
13467 ¹⁴⁸	8-25-50	Antelope Spring	NW $\frac{1}{4}$ SW $\frac{1}{4}$	4 4 S.	47 E.	J. Daniels; Corps of Eng.	Denied
13468 ¹⁴⁷	8-25-50	Und. (Sulphide Well)	SW $\frac{1}{4}$ NW $\frac{1}{4}$	21 4 S.	47 E.	J. Daniels; Corps of Eng.	Denied
¹⁴⁸ 13625	1-29-51	Silver Bow Spring	NW $\frac{1}{4}$ NE $\frac{1}{4}$	9 1 S.	49 E.	James M. Daniels	Approved
13679 ¹⁴⁸	4-12-51	Und. (Molan Well)	NW $\frac{1}{4}$ SE $\frac{1}{4}$	1 3 S.	48 E.	.....do.....	Approved