

c.f.s. for the watering of 50 head of horses and 50 head of cattle. The point of diversion and place of use are located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 33, T. 22 N., R. 38 E. This certificate has been assigned to F. F. Franke and R. J. Lofthouse, and protestant claims he has acquired this certificate from the assignees. The point of diversion under Certificate No. 1681 is located about seven miles southeast and upstream from the point of diversion under Application No. 13194.

Application No. 13195, filed to appropriate the waters of Dyer Canyon Creek, is located on the west side of the Clan-Alpine Range in Dyer Canyon, Dixie Valley. The applicant has cleared and was irrigating two fields below the proposed place of use under this application. Our records indicate that the area being cultivated has been applied for under Desert Land Entry No. 016439 and the water appurtenant under such lands has been applied for under Application 15387. Our records also indicate that the land to be irrigated under said Application No. 13195 has not been applied for under desert land entry by the applicant.

The protestant, Thomas Ormachea, has a water right on this source by virtue of Certificate No. 1525 issued under Permit No. 5991 for 0.303 c.f.s. or 128 acre-feet per season of the waters of Willow Creek, shown as Dyer Canyon Creek under Application No. 13195. At the time of the investigation, approximately 3.0 c.f.s. was flowing in this source. The point of diversion is within the same subdivision as the point of diversion under Application No. 13195, being in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 4, T. 21 N., R. 37 E., M.D.B.&M., and the place of use, consisting of 30.3 acres, is as follows:

0.3	acres	in	the	SE $\frac{1}{4}$	NW $\frac{1}{4}$	Sec. 33,	T. 22 N.,	R. 37 E.
8.0	"	"	"	NE $\frac{1}{4}$	SW $\frac{1}{4}$	"	"	"
8.0	"	"	"	NW $\frac{1}{4}$	SE $\frac{1}{4}$	"	"	"
1.4	"	"	"	SW $\frac{1}{4}$	SE $\frac{1}{4}$	"	"	"
4.2	"	"	"	SE $\frac{1}{4}$	SE $\frac{1}{4}$	"	"	"
6.9	"	"	"	NE $\frac{1}{4}$	NE $\frac{1}{4}$	Sec. 4,	T. 21 N.,	R. 37 E.
1.5	"	"	"	SE $\frac{1}{4}$	NE $\frac{1}{4}$	"	"	"

30.3 acres

The land under this certificate, and the land proposed to be irrigated under Application No. 13195, are in conflict. Thomas Ormachea has title to some of the land to be irrigated under Application No. 13195 and the balance is public domain.

By letter dated December 23, 1954 the applicant and protestant were advised as follows:

"The land to be irrigated under this application is public domain and the applicant has not taken any steps to acquire title to the land under one of the various land acts. This application will be held in abeyance for a period of ninety (90) days within which the

applicant must present to this office proof that he has taken action to acquire the land from the Government. If the applicant is successful in acquiring the land, a ruling will be issued under this application granting his permit on grounds that it will not interfere with Certificate No. 1681 in the name of the protestant. If the land is not acquired, a ruling will be issued denying the application on grounds that the applicant has no land on which to place the water to beneficial use."

On the same date, in connection with Application No. 13195, the applicant and protestant were advised as follows:

"In accordance with the Bureau of Land Management's records, Thomas Ormachea owns some of the 40-acre subdivision described as the land to be irrigated under Application No. 13195. Mr. Ormachea also holds a water right on some of the land to be irrigated under his Certificate No. 1525. Records in the office of the Bureau of Land Management reveal that Mr. Stark has made no effort to acquire title to the land under Application 13195. There is also no record of Mr. Stark owning these lands at the present time. This application will be held for a period of 90 days within which the applicant must show proof to this office that he has taken steps to acquire the land to be irrigated. If the applicant is successful in acquiring the land, it will be necessary for this office to hold additional investigations or a hearing to determine whether the granting of this application would interfere with existing rights under Certificate No. 1525."

Opinion:

The opinion of this office is that the applicant under Application No. 1319⁴ and Application 13195 cannot place the water to beneficial use because he does not have title to the land he plans to irrigate and has not taken necessary action to acquire said land.

RULING

The protests to the granting of these applications are neither sustained or overruled but said applications are herewith denied on grounds that the applicant has not proceeded with due diligence in acquiring title to the land to be irrigated, or in submitting evidence to this office that he has taken steps to acquire title to said lands in accordance with our notice of December 23, 1954.

Respectfully submitted,

Dated this 6th day
of May, 1955.


HUGH A. SHAMBERGER
State Engineer