

IN THE MATTER OF APPLICATIONS )  
30842, 30843, 30844 AND 30933 )  
TO APPROPRIATE WATER FROM TORRE )  
CREEK, HILDEBRAND CREEK, COTTON-) )  
WOOD CREEK AND PRESTON CREEK, )  
RESPECTIVELY, IN DIAMOND VALLEY,) )  
EUREKA COUNTY, NEVADA. )

R U L I N G

INTRODUCTION

Applications 30842, 30843 and 30844 were filed in the State Engineer's office on November 24, 1976 and Application 30933 was filed on December 15, 1976, to appropriate the waters of Torre Creek, Hildebrand Creek, Cottonwood Creek and Preston Creek respectively in Diamond Valley, Eureka County, Nevada.

Protests to the granting of Applications 30842, 30843 and 30844 were filed on January 28, 1977. A second protest to the granting of Applications 30842 and 30843 was filed on February 22, 1977. A protest to the granting of Application 30933 was filed on February 7, 1977.

A field investigation was held in the matter of protested Applications 30842, 30843, 30844 and 30933 on April 13, 1977, and a report of the field investigation is on file in the State Engineer's office.

FINDINGS OF FACT

I

Applications 30842, 30843 and 30844 were filed on November 24, 1976 and Application 30933 was filed on December 15, 1976, all in the name of Jerry L. Machacek, each to appropriate 5.4 c.f.s. of water from Torre Creek, Hildebrand Creek, Cottonwood Creek and Preston Creek, and all for the irrigation of 301.2 acres located within Lots 1, 2 and 5, Section 1, T.20N., R.53E., M.D.B. & M. and the SE $\frac{1}{4}$  of Section 36, T.21N., R.53E., M.D.B. & M. The proposed points of diversion under these four applications are located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  Section 17, SW $\frac{1}{4}$  SE $\frac{1}{4}$  Section 8, NE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 6 and the NE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 5, respectively, all in T.20N., R.54E., M.D.B. & M.

II

A protest to the granting of Application 30842 was filed on January 28, 1977, in the name of United Dressed Beef, Inc. This protest seeks denial of the application

on the grounds that: "United Dressed Beef, Inc. has an existing Proof of Appropriation of water for irrigation of the waters of Torre Creek, Application Number 02888 and the granting of Application 30842 would impair and disrupt the existing right and irrigation system."

A second protest to the granting of Application 30842 was filed on February 22, 1977. This protest, filed in the name of Kolbe K. Klindt, seeks denial of the application on the grounds that: "The natural flow of Torre Creek empties into the South  $\frac{1}{2}$  of Section 11, T.20N., R.53E. and has historically been used for natural irrigation on the  $\frac{1}{2}$  section for agricultural purposes. That land is currently being prepared for planting and any outflow from Torre Creek is needed to supplement irrigation."

A protest to the granting of Application 30843 was filed on January 28, 1977, in the name of United Dressed Beef, Inc. This protest seeks denial of the application on the grounds that: "United Dressed Beef, Inc. has an existing Proof of Appropriation of water for irrigation to the waters of Hildebrand Creek - Application #02884 and the granting of Application #30843 would impair and disrupt the existing right and irrigation system."

A second protest to the granting of Application 30843 was filed on February 22, 1977, in the name of Kolbe K. Klindt. This protest seeks denial of the application on the grounds that: "The natural flow of Hildebrand Creek empties onto the South  $\frac{1}{2}$  Section 11, T.20N., R.53E., and has historically been used on that  $\frac{1}{2}$  section for agricultural purposes. That land is currently being prepared for planting and any outflow from Hildebrand Creek is needed to supplement irrigation."

A protest to the granting of Application 30844 was filed on January 28, 1977, in the name of United Dressed Beef, Inc. This protest seeks denial of the application on the grounds that: "United Dressed Beef, Inc., has a Certificate of Appropriation #2289 (165) to irrigate 40 acres and an inactive Proof of Appropriation #01244 on the water of Cottonwood Creek. The granting of Application #30844 would impair and disrupt the existing right in the irrigation system."

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A protest to the granting of Application 30933 was filed on February 7, 1977, in the name of United Dressed Beef, Inc. This protest seeks denial of the application on the grounds that: "United Dressed Beef, Inc., has a Certificate of Appropriation of Water #1937 (#43) to irrigate 42.16 acres with the water of Preston Creek through Mattei Ditch. The Certificate was granted August 17, 1912 by the State Engineer. The granting of Application #30933 would impair and disrupt the existing rights in the irrigation system."

### III

Applications 30842, 30843 and 30844 became ready for action by the State Engineer's office on March 14, 1977. Application 30933 became ready for action by the State Engineer's office on March 28, 1977.

### IV

An unadjudicated Proof of Appropriation, Proof #02888, of record in the name of United Dressed Beef, Inc. has been filed on Torre Creek and claims a vested right in the amount of 1.16 c.f.s. not to exceed 414 acre-feet per year for the irrigation of 138 acres. The point of diversion and place of use under Proof #02888 are upstream from the point of diversion under Application 30842.

### V

An unadjudicated Proof of Appropriation, Proof #02884, of record in the name of United Dressed Beef, Inc., has been filed on Hildebrand Creek and claims a vested right in the amount of 0.17 c.f.s. not to exceed 186 acre-feet per year for the irrigation of 62 acres. The point of diversion and place of use under Proof #02884 are upstream from the point of diversion under Application 30843.

### VI

Certificate of Appropriation No. 165, of record in the name of United Dressed Beef, Inc., was issued on January 14, 1914, under Permits 2157 and 2289 in the amount of 0.4 c.f.s. from Cottonwood Creek for the irrigation of 40 acres. The point of diversion and place of use under Certificate 165 are upstream from the point of diversion under Application 30844.

VII

Certificate of Appropriation No. 43, of record in the name of United Dressed Beef, Inc., was issued on August 17, 1912, under Permit 1937 in the amount of 0.43 c.f.s. from Preston Creek for the irrigation of 42.16 acres. The point of diversion and place of use under Certificate 43 are upstream from the point of diversion under Application 30933.

VIII

The proposed points of diversion under Applications 30842, 30843, 30844 and 30933, and the ditches for conveyance of the water, are the same as those of Permits 26659, 26658, 26708 and 26707, respectively, of record in the name of LaVerne D. and Eunice M. Machacek, father and mother of the applicant. Coincidental use of the diversions and ditches has been agreed to between both parties. The proposed place of use under Applications 30842, 30843, 30844 and 30933 is entirely separate from the place of use under Permits 26659, 26658, 26708 and 26707.

IX

Permits 26659, 26658, 26708 and 26707 were issued in the amount of 9.4 c.f.s. each. Proofs of Beneficial Use were filed under these permits on March 7, 1977, which included measured diversion rates of 14.8 c.f.s., 10.5 c.f.s., 15.2 c.f.s., and 16.3 c.f.s., respectively. All four of these measurements exceed the amounts granted under the permits.

X

Other than those previously mentioned under this ruling, there are no other permitted or certificated rights or proofs of appropriation of record in the State Engineer's office on the four streams on which Applications 30842, 30843, 30844 and 30933 have been filed.

CONCLUSIONS

1. The State Engineer has jurisdiction of the parties and the subject matter of this ruling, as described under NRS 533.025 and 533.030, Subsection 1.

2. The State Engineer shall approve applications to appropriate water where the proposed use does not impair the value of existing rights or be otherwise detrimental to the public interest, as described under NRS 533.370, subsection 1.

3. Measurements made by a licensed water right surveyor of the amount of water diverted under Permits 26658, 26659, 26707 and 26708 indicate that there are periods of flow at the proposed points of diversion under Applications 30842, 30843, 30844 and 30933 which exceed the amounts appropriated under all existing rights on each stream system.

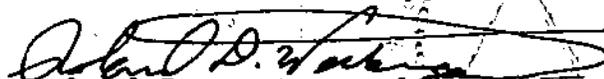
4. There are no water rights of record below the points of diversion under Applications 30842, 30843, 30844 and 30933.

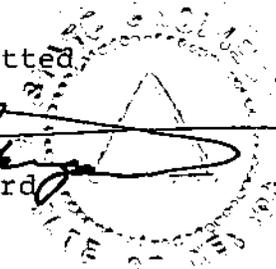
5. Any permit granted by the State Engineer is issued subject to all existing rights, whether vested or appropriated, on that stream system.

RULING

The protests to the granting of Applications 30842, 30843, 30844 and 30933 are hereby overruled on the grounds that there is unappropriated water available for appropriation and that the granting of permits under these applications will not impair the value of existing rights or be otherwise detrimental to the public interest. Permits will be issued under Applications 30842, 30843, 30844 and 30933, subject to existing rights, upon receipt of the statutory permit fees

Respectfully submitted,

  
Roland D. Westergard  
State Engineer



BAR/RDW/bs

Dated this 11th day  
of May, 1977.