

IN THE MATTER OF APPLICATIONS 44459, 45445,
AND 45446 FILED BY ROBERT E. DICKENSON FOR)
PERMISSION TO APPROPRIATE (STORE) WATER)
FROM ILLIPAH CREEK AND APPLICATION 45088)
FILED BY THE NEVADA DEPARTMENT OF WILDLIFE)
TO APPROPRIATE (STORE) WATER FROM ILLIPAH)
CREEK IN WHITE PINE COUNTY, NEVADA)

R U L I N G

INTRODUCTION

Application 44459 was filed by Robert E. Dickenson on September 21, 1981, for permission to store 465 acre-feet of water from Illipah Creek for irrigation purposes. The proposed point of diversion is within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T17N, R58E, MDB&M. The proposed place of use is described as 7,140 acres of land within portions of Sections 7, 9, 11, 12, and 18 of T17N, R59E, MDB&M.

Application 45088 was filed by the Nevada Department of Wildlife on November 30, 1981, for permission to store 160 acre-feet of water from Illipah Creek for public recreation, and fish and wildlife habitat. The proposed point of diversion is within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 13, T17N, R58E, MDB&M. The proposed place of use is the SE $\frac{1}{4}$ of Section 13 and the NE $\frac{1}{4}$ of Section 24, T17N, R50E, MDB&M.

Applications 45445 and 45446 were also filed by Robert E. Dickenson on March 11, 1982.

Application 45445 is to change the point of diversion and place of use of Permit 13372 for 176.52 acre-feet of storage water from Illipah Creek.

Application 45446 is to change the point of diversion and place of use of Permit 28539 for 499 acre-feet of storage water from Illipah Creek.

The new point of diversion and place of use for both applications are the same as previously mentioned for Application 44459.

All four applications were timely protested on July 6, 1982, by Gardner Ranches, Inc., and Thomas Rosevear on the grounds "that it would impair and conflict with the value of existing rights; that it would be against public policy to grant said application(s); that it would be contrary to statute; that the granting of said application(s) would interfere with the customary use of Protestants' grazing of said areas and Protestants' existing water rights and ranges."

GENERAL

The following water rights are of record in the office of the State Engineer on Illipah Creek.

Proof 02541, of record in the name of Jesse Gardner, was filed May 10, 1965, claiming a vested right on 2.0 cfs of water from Illipah Creek for stock watering (1900-1910 1,000 head of livestock; 1910-1920 2,000 head of livestock; 1920-1950 2,000 head of livestock by Moorman and 1,000 head of livestock by White River Users) purposes. The point of diversion is described as within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 9, T17N, R59E, MDB&M. The place of use is described as Cottonwood Reservoir within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 11, T16N, R59E, MDB&M.

Proof 02542, of record in the name of Jesse Gardner, was filed May 10, 1965, claiming a vested right on 2.0 cfs of water from Illipah Creek for stock watering (1900-1910 1,000 head of livestock; 1910-1920 2,000 head of livestock; 1920-1950 2,000 head of livestock by Moorman and 1,000 head of livestock by White River Users) purposes. The point of diversion is described as within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 9, T17N, R59E, MDB&M. The place of use is described as Jakes Pond in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 19, T17N, R60E, unsurveyed.

Proof 02543, of record in the names of Tom and Walter Rosevear and Jesse Gardner, was filed May 10, 1965, claiming a vested right on 2.0 cfs of water from Illipah Creek for stock watering (1900-1910 1,000 head of livestock; 1910-1920 2,000 head of livestock; 1920-1950 2,000 head of livestock by Moorman and 1,000 head of livestock by White River Users) purposes. The point of diversion is described as within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 9, T17N, R59E, MDB&M. The place of use is described as Walde Pond within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 21, T17N, R60E, MDB&M.

Certificate 1853, subject of Permit 8147, of record in the name of Robert and Dorothy Dickenson, was issued September 21, 1932, for 0.6376 cfs of water from Illipah Creek flood waters for irrigation purposes. The point of diversion is within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 9, T17N, R59E, MDB&M. The place of use is 63.76 acres within portions of the E $\frac{1}{2}$ NE $\frac{1}{4}$ Section 10, W $\frac{1}{2}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 11, T17N, R59E, MDB&M. The period of use is from May 1st to August 31st of each year.

Certificate 4708, subject of Permit 11947, of record in the names of Robert and Dorothy Dickenson, was issued April 9, 1958, for 1/3 of the flow of Illipah Creek for irrigation purposes. The two points of diversion are described as within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 9, and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 10, T17N, R59E, MDB&M. The place of use is described as 155.3 acres within portions of NE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ Section 10 and N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 11, T17N, R59E, MDB&M. The period of use is from January 1st to December 31st of each year. This certificate changed the point of diversion and place of use of a portion of a decreed right on Illipah Creek as entered in the District Court of White Pine County, May 16, 1887. This certificate was limited to a diversion not to exceed 3.0 cfs of water.

Certificate 3756, subject of Permit 13426, of record in the name of Gardner Ranches, Inc., was issued January 21, 1952, for 0.063 cfs of water from Illipah Creek, or sufficient to water 2,000 head of cattle and 25 horses. The point of diversion is within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 9, T17N, R59E, MDB&M. The place of use is Cottonwood Reservoir within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 11, T16N, R59E, MDB&M. The period of use is from October 1st to June 15th of the following year.

Certificate 3757, subject of Permit 13584, of record in the name of Gardner Ranches, Inc., was issued January 21, 1952, for 0.063 cfs of water from Illipah Creek, or sufficient to water 2,000 head of cattle and 25 horses. The point of diversion is within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 10, T17N, R59E, MDB&M. The place of use is Walde Pond within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 21, T17N, R60E, unsurveyed.

Certificate 4517, subject of Permit 13372, of record in the name of Robert and Dorothy Dickenson, was issued May 23, 1957, to store 176.52 acre-feet of water annually from Illipah Creek for irrigation purposes. The point of diversion is within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 13, T17N, R58E, MDB&M. The place of use is 155.3 acres within portions of NE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ Section 10, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 11, T17N, R59E, MDB&M.

The Illipah Creek Decree $\frac{1}{4}$, proportioned the flow to: Jacob Harris, the entire flow of the stream for the first 7 $\frac{1}{2}$ days of each month during the irrigation season; Alice Shekell, the entire flow of the stream for the second 7 $\frac{1}{2}$ days of each month during the irrigation season; John Anderson, the entire flow of the stream for the third 7 $\frac{1}{2}$ days of each month during the irrigation season; and John Anderson, for the fourth 7 $\frac{1}{2}$ days of each month during the irrigation season. The Decree required each user to allow enough water for domestic purposes for man and beast to go by.

FINDINGS OF FACT

I

A new dam was constructed on Illipah Creek in late 1981 and completed in early 1982 as a result of an agreement between the Nevada Department of Wildlife and Robert E. and Dorothy M. Dickenson. The dam is located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T17N, R58E. The capacity is rated at 1,141 acre-feet.

II

All of the current irrigation water rights on Illipah Creek are presently in the name of Robert and Dorothy Dickenson.

III

There are vested stock watering claims 2/ on Illipah Creek, the limit and extent of which have not been determined as set forth under Chapter 533 of NRS.

IV

Applications 45445 and 45446 filed by Robert E. Dickenson are to change the point of diversion and the place of use of existing permitted rights on Illipah Creek, thus are not new appropriations.

V

Application 45088 filed by the Nevada Department of Wildlife for public recreation and fish and wildlife habitat purposes is for the storage of the minimum pool of water in the Illipah Dam which does not constitute consumptive use.

VI

Application 44459 filed by Robert E. Dickenson is for a new appropriation of water to include the added storage capacity in the new Illipah Dam.

VII

There is no restriction in the Illipah Creek Decree of 1887 that precludes the storage of water for use by the owners of the decreed rights.

CONCLUSIONS

I

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination (NRS 533.025 and 533.030(1)).

II

The information available in the State Engineer's 3/ records does not indicate that the granting of storage rights for irrigation and recreation purposes will adversely affect downstream existing claims and existing appropriations for stock water that have a period of use from October to June of each year.

III

Applications 44459, 45088, 45445, and 45446 were filed and processed to a ready for action status in accordance with the procedures set out in NRS 533.

IV

The evidence on the record supports a finding that the proposed use of water of Illipah Creek will not adversely affect existing rights and will be in the public interest and welfare.

RULING

The protests to Applications 44459, 45088, 45445, and 45446 are hereby overruled and permits will be issued thereunder upon receipt of statutory permit fees with the provision that existing stock watering claims and rights will not be adversely affected during the non-irrigation season.

Respectfully submitted,



Peter G. Morros
* State Engineer

PGM/GC/ja

Dated this 15th day
of AUGUST, 1983.

FOOTNOTES

1. Harris vs. Shekell, et al., District Court in and for White Pine County, May 16, 1887.
2. State Engineer's Ruling No. 2024, January 23, 1975. Public records in the office of the State Engineer.
3. Public records in the office of the State Engineer, Illipah Creek.