

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 46619)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF ILLIPAH CREEK IN JAKES)
VALLEY, WHITE PINE COUNTY, NEVADA.)

RULING

GENERAL

Application 46619 was filed on February 9, 1983, by Thomas Rosevear to appropriate 2.0 c.f.s. of water from Illipah Creek for stockwater purposes within the SW1/4 SW1/4 Section 3, T.16N., R.60E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NW1/4 Section 10, T.17N., R.59E., M.D.B.&M.¹

The referenced application was timely protested by the Moorman Ranch, Robert E. Dickenson and Nevada State Department of Wildlife on the following grounds:¹

Moorman Ranch and Robert E. Dickenson

1. There have been several applications for the Illipah water filed before Mr. Rosevear's application.
2. It would be a great waste of water to try to run water approximately 11 miles in an open ditch.
3. The cost/benefit ratio would be out of proportion, and the water could be put to a greater beneficial use in other ways.
4. Recreational use and Moorman Ranch use would be greatly endangered by diverting water past the Moorman Ranch.
5. Ditches now serving the Moorman Ranch are not able to carry the proposed amount of water to serve both uses simultaneously.
6. Drawdown of the water level would cause damage to the reservoir dam and outlet structure.
7. Water flowing through a ditch during winter would be subject to overflow loss due to freezing."

Nevada Department of Wildlife - William A. Molini

"The approval of this application could result in a detrious impact on Illipah Reservoir, recently constructed by Nevada Department of Wildlife. The Department has filed on storage rights within the reservoir for the purpose of maintaining wildlife.

¹ Public record in the office of the State Engineer.

The primary fault with this application is the total quantity of water to be diverted, 2 cfs. The existing diversion works are in very poor condition and the 2 cfs diversion is necessary to ultimately deliver the water to the point of use.

The impact on our storage application and reservoir will come when Mr. Rosevear demands the 2 cfs at the same time Mr. Dickenson is irrigating. The total flow out of the reservoir will be much greater than the total inflow. With the resultant rapid drawdown, the integrity of Illipah rain could be at risk due to the disturbed equilibrium conditions with the structure. Further, the fisheries and other recreational values of the reservoir could be impacted due to siltation and erosion from the rapid drawdown.

Finally, the management agreement between the State of Nevada and Bob Dickenson concerning the condition for storing and releasing water within Illipah Reservoir will be placed in jeopardy and subject to control by a third party."

Both protestants requested that Application 46619 be denied.

FINDINGS OF FACT

I.

The following water rights and claims of vested use are of record in the office of the State Engineer on Illipah Creek.¹

Proof 02541 in the name of Jesse Gardner was filed On May 10, 1965, claiming a vested right for 2.0 c.f.s. of water from Illipah Creek for stockwatering purposes. The point of diversion was given as within the NW1/4 SE1/4 Section 9, T.17N., R.59E., M.D.B.&M., and the place of use - Cottonwood Reservoir - is located in the NE1/4 NE1/4 Section 11, T.16N., R.59E., M.D.B.&M.

Proof 02542 in the name of Jesse Gardner was filed on May 10, 1965 claiming a vested right for 2.0 c.f.s. of water from Illipah Creek for stockwatering purposes. The point of diversion was given as within the NW1/4 SE1/4 Section 9, T.17N., R.59E., M.D.B.&M., and the place of use - Jakes Pond - is located in the NW1/4 SW1/4 Section 19, T.17N., R.60E., M.D.B.&M. (unsurveyed).

Proof 02543 in the name of Tom and Walter Rosevear and Jesse Gardner was filed on May 10, 1965, claiming a vested right for 2.0 c.f.s. of water from Illipah Creek for stockwatering purposes. The point of diversion was given as the NW1/4 SE1/4 Section 10, T.17N., R.59E., M.D.B.&M., and the place of use - Walde Pond - is located in the NE1/4 SW1/4 Section 21, T.17N., R.60E., M.D.B.&M.

Permit 8147, Certificate 1853, in the name of Robert Dickenson was filed on May 31, 1927, and issued for 0.6376 c.f.s. of water from Illipah Creek flood waters for irrigation purposes. The point of diversion is within the SE1/4 NE1/4 Section 9, T.17N., R.59E., M.D.B.&M., and the place of use is 63.76 acres within portions of the E1/2 NE1/4 Section 10, W1/2 NW1/4 and NE1/4 NW1/4 Section 11, T.17N., R.59E., M.D.B.&M. The period of use is from May 1st to August 31st of each year.

Permit 11947, Certificate 4708, in the name of Robert and Dorothy Dickenson was filed on August 4, 1947, and issued for one third of the flow of Illipah Creek as decreed for irrigation purposes. The two points of diversion are described as within the NW1/4 SE1/4 Section 9 and the NE1/4 NW1/4 Section 10, T.17N., R.59E., M.D.B.&M. The place of use is described as 155.3 acres within portions of the NE1/4 NW1/4, NE1/4 Section 10; N1/2 NW1/4, SW1/4 NW1/4 Section 11, T.17N., R.59E., M.D.B.&M. 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 c.f.s. of water.

Permit 13426, Certificate 3756, in the name of Gardner Ranching, Inc., et al., was filed on June 26, 1950, and issued for 0.063 c.f.s. of water from Illipah Creek for stockwatering purposes. The point of diversion is within the NE1/4 SE1/4 Section 9, T.17N., R.59E., M.D.B.&M. The place of use - Cottonwood Reservoir - is within the NE1/4 NE1/4 Section 11, T.16N., R.59E., M.D.B.&M.

Permit 13584, Certificate 3757, in the name of Gardner Ranches, Inc., et al., was filed on June 2, 1951, and issued for 0.063 c.f.s. of water from Illipah Creek for stockwatering purposes. The point of diversion is within the NE1/4 NW1/4 Section 10, T.17N., R.59E., M.D.B.&M. The place of use - Walde Pond - is within the NW1/4 SW1/4 Section 21, T.17N., R.60E., M.D.B.&M. (unsurveyed).

Permit 44459 in the name of Robert E. Dickenson was filed on September 21, 1981, and issued for 465 acre-feet of storage annually for irrigation. The point of diversion is located within the SE1/4 SE1/4 Section 13, T.17N., R.58E., M.D.B.&M., and the place of use is within portions of the S1/2 SE1/4 Section 7, SE1/4 NE1/4 Section 9, N1/2 Section 10, N1/2 Section 11, N1/2 Section 12, NW1/4 NE1/4 Section 18, T.17N., R.59E., M.D.B.&M.

Permit 45088, Certificate 11215, in the name of Joseph C. Greenley, Director, Nevada Department of Wildlife, was filed on November 30, 1981, and issued for 160 acre-feet of storage for public recreation - fish and wildlife purposes. The point of diversion is located within the SE1/4 SE1/4 Section 13, T.17N., R.58E., M.D.B.&M., and the place of use - Illipah Reservoir - is within the SE1/4 Section 13, NE1/4 Section 24, T.17N., R.58E., M.D.B.&M.

Permit 45445 in the name of Robert E. Dickenson was filed to change the point of diversion and place of use of Permit 13372 for 176.52 acre-feet annually for storage and irrigation purposes. The point of diversion is located within the SE1/4 SE1/4 Section 13, T.17N., R.58E., M.D.B.&M., and the place of use is within portions of Sections 7, 9, 10, 11, 12 and 18, T.17N., R.59E., M.D.B.&M.

Permit 45446 in the name of Robert E. Dickenson was filed to change the point of diversion and place of use of Permit 28539 for 499 acre-feet annually for storage and irrigation purposes. The point of diversion is located within the SE1/4 SE1/4 Section 13, T.17N., R.58E., M.D.B.&M., and the place of use is within portions of Sections 7, 9, 10, 11, 12 and 18, T.17N., R.59E., M.D.B.&M.

The Illipah Creek Decree² proportioned the flow to: Jacob Harris, the entire flow of the stream for the first 7-1/2 days of each month during the irrigation season; Alice Shekell, the entire flow of the stream for the second 7-1/2 days of each month during the irrigation season; John Anderson, the entire flow of the stream for the third 7-1/2 days of each month during the irrigation season; and John Garadello and his partners and Joseph Oneto, the entire flow of the stream for the fourth 7-1/2 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.

II.

Application 46619, filed by Thomas Rosevear, is a new appropriation to divert up to 2.0 c.f.s. of water from Illipah Creek for transportation in an open ditch for approximately 11 miles to a stockwatering pond for up to 650 cattle.

III.

The limit and extent of the claims of vested rights for stockwatering on file have not yet been determined as set forth under Chapter 533 of NRS.

IV.

The State Engineer determines that Illipah Creek is a fully appropriated stream system.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.³

II.

The State Engineer is prohibited by law⁴ from granting a permit under an application to appropriate the public waters where:

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public interest.

² Harris v. Shekell, et al., District Court in and for White Pine County, May 16, 1887.

³ NRS 533.325.

⁴ NRS 533.370(3).

III.

Approval of Application 46619 would allow a substantial portion of Illipah Creek to be diverted to cover transportation losses and for stockwatering purposes in a stream that has undetermined claims of vested rights. The diversion could also conflict with existing decreed and storage rights in Illipah Dam if activated in conjunction with present irrigation demands of the reservoir waters.

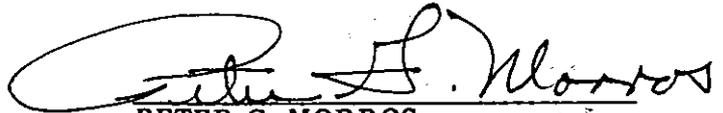
IV.

Based on existing rights and the Illipah Creek Civil Decree, the State Engineer concludes that Illipah Creek is a fully appropriated stream system.

RULING

Application 46619 is hereby denied on the grounds that it would conflict with and impair existing rights on the source, that there is no unappropriated water in the source, and that the granting thereof would be detrimental to the public interest.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/GC/bl

Dated this 22nd day of
July, 1985.