

IN THE MATTER OF APPLICATION 24233)
FILED NOV. 21, 1968, BY TONY AND BEULAH)
TESTOLIN, JR. (AS JOINT TENANTS) TO) R U L I N G
APPROPRIATE WATER FROM COTTONWOOD CREEK IN)
NYE COUNTY.)

GENERAL:

Application 24233 was filed November 21, 1968, by Tony and Beulah Testolin, Jr. to appropriate 9.45 c.f.s. of water from Cottonwood Creek for irrigation and domestic purposes. The proposed point of diversion is within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 23, T.15N., R.41E., M.D.B.&M. The proposed place of use is within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 22; N $\frac{1}{2}$ NE $\frac{1}{4}$ Section 28; and the N $\frac{1}{2}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 27; all in T.15N., R.41E., M.D.B.&M.

A protest to the granting of a permit under Application 24233 was filed on March 22, 1968, by Edward C. Reed, Jr., Assistant Secretary, V-B Cattle Co. The protest claimed that the protestant was the owner and holder of vested and permitted rights on the source, and that said rights would be impaired and lost; that the protestant claimed both irrigation and stockwatering rights from the source; that protestant was the owner of all grazing rights and livestock watering rights in the area from the source; and that the source is fully appropriated.

Following are the rights of record on file in this office for the waters of Cottonwood Creek:

Permit 23411, owned by V-B Cattle Co. is for 10 c.f.s. of water from Cottonwood Creek for irrigation purposes in various subdivisions in T.15N., R.41E., and T.16N., R.42E., M.D.B.&M. The point of diversion is within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 18, T.15N., R.42E. The point of diversion is upstream from the proposed point of diversion under Application 24233.

Proof of Appropriation 02179 was filed by Mrs. C. L. Heath claiming the appropriation of Cottonwood Creek for the irrigation of 54.75 acres in the SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ of Section 22, T.15N., R.42E., M.D.B.&M. The applicants, Tony and Beulah Testolin claim to be successors in interest to Mrs. Heath.

A field investigation in the matter of Application 24233 was held on August 1, 1968. During the investigation, the protestant's representatives claimed that an order had been entered in the District Court in Austin which determined the rights in Cottonwood Creek. A request to the protestant for a copy of the decree received no reply.

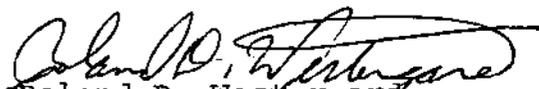
OPINION:

It is the opinion of this office that the granting of a permit under Application 24233, with the understanding that no diversion will be made unless the flow, at the point of diversion, exceeds the amount necessary to provide for prior existing rights will not adversely affect the value of or impair existing rights.

RULING

The protest to Application 24233 is herewith overruled, and a permit will be issued, subject to existing rights and with the understanding that no diversion will be made unless the flow, at the point of diversion, exceeds the amount necessary to provide for prior existing rights, upon payment of the statutory fees.

Respectfully, submitted,


Roland D. Westergard
State Engineer

RDW:JCP:jw

Dated this 10th day
of December, 1968.