

IN THE MATTER OF APPLICATIONS NOS. 12665 TO )  
12669, INCLUSIVE, FILED OCTOBER 2, 1948, BY )  
LEROY SHARP, JAMES SHARP AND HOWARD SHARP TO )  
APPROPRIATE WATER OF ANDREWS SPRING, CAZIER :  
SPRING, COLD SPRING, SAWMILL SPRING AND BOX :  
CANYON SPRING, RESPECTIVELY, IN THE ANDREWS- :  
HEATH RANGE, NYE COUNTY, NEVADA, FOR STOCK- )  
WATERING PURPOSES. )

RULING

BRIEF DESCRIPTION OF THE ABOVE-NUMBERED APPLICATIONS

173<sup>2</sup>  
These applications are for the appropriation of water from sources on which no other live filings exist.

Application No. 12665 is for 0.25 c.f.s. of the waters of Andrews Spring for diversion at a point in the SE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 2, T. 8 N., R. 57 E., M.D.B.&M. unsurveyed, or at a point from which the SW corner Section 26, T. 8 N., R. 57 E., M.D.B.&M. bears S. 55° 48' 30" W., 43,608 feet to water at this place 500 head of cattle the year round.

Application No. 12666 is for 0.25 c.f.s. of the waters of Cazier Spring for diversion at a point in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  Section 21, T. 8 N., R. 58 E., M.D.B.&M. unsurveyed, or at a point from which the SW corner Section 26, T. 8 N., R. 57 E., M.D.B.&M. bears S. 74° 52' 40" W., 25,191 feet to water at this place 500 head of cattle the year round.

Application No. 12667 is for 0.25 c.f.s. of the waters of Cold Spring for diversion at a point in the SW $\frac{1}{4}$  NW $\frac{1}{4}$  Section 36, T. 8 N., R. 58 E., M.D.B.&M. unsurveyed, or at a point from which the SW corner Section 26, T. 8 N., R. 57 E., M.D.B.&M. bears N. 87° 44' W., 37,019 feet to water at this place 500 head of cattle the year round.

Application No. 12668 is for 0.25 c.f.s. of the waters of Sawmill Spring for diversion at a point in the NW $\frac{1}{4}$  SW $\frac{1}{4}$  Section 18, T. 7 N., R. 59 E., M.D.B.&M. unsurveyed, or at a point from which the SW corner Section 26, T. 8 N., R. 57 E., M.D.B.&M. bears N. 66° 01' W., 47,541 feet to water 500 head of cattle the year round at the same place as the point of diversion.

Application No. 12669 is for 0.25 c.f.s. of the waters of Box Canyon Springs for diversion at a point in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  Section 9, T. 8 N., R. 58 E., M.D.B.&M. unsurveyed, or at a point from which the SW corner Section 26, T. 8 N., R. 57 E., M.D.B.&M. bears S. 56° 52' W., 29,812 feet to water at this place 500 head of cattle the year round.

The applications were all legally published in the Tonopah Times-Bonanza, a weekly newspaper published in Tonopah, Nye County, Nevada. The last publication appeared in the April 8, 1949 issue.

Protests against the granting of these applications were filed on April 1, 1949 by Emery Garrett of Currant, Nevada, on the reasons and grounds that now and for many years last past has been appropriating and using water under certain applications below described, owned by protestant and his predecessors in interest; that applicants have no right whatever in this district; and that the granting of the applications will materially effect and impair the existing rights of protestant; that said district will not support any further grazing other than that of protestant, all of which is now beneficially used together with said waters by protestant. WHEREOF, protestant prays that the applications be denied and that the use of water herein claimed by protestant be confirmed and that an order be entered establishing said rights and for such other relief as the State Engineer deems just and proper.

With reference to the various springs, the waters of which are sought to be appropriated by applicants, the protests refers to them as follows:

Andrews Spring, applicants' No. 12665, is situated within one and one-fourth ( $1\frac{1}{4}$ ) miles N.E. of Log Spring, on which protestant now and for many years has been appropriating and using the water under Application No. 7934 owned by protestant and his predecessors in interest.

Cazier Spring, applicants' No. 12666, is situated within one and one-half ( $1\frac{1}{2}$ ) miles west of Morgan Spring, on which protestant now and for many years has been using the water under Application No. 7938 owned by protestant and his predecessors in interest.

Cold Spring, applicants' No. 12667, is situated within one and one-fourth ( $1\frac{1}{4}$ ) miles S.W. of Big Spring, on which protestant now and for many years has been appropriating and using water under Application No. 7935 owned by protestant and his predecessors in interest.

Sawmill Spring, applicants' No. 12668, is situated within one-half ( $\frac{1}{2}$ ) mile S.E. of Heath Spring on which protestant now and for many years has been appropriating and using water under Application No. 7937 owned by protestant and his predecessors in interest.

Box Canyon Spring, applicants' No. 12669, is situated one and one-fourth ( $1\frac{1}{4}$ ) miles S.W. of Log Spring, on which protestant now and for many years has been appropriating and using water under Application No. 7934 owned by protestant and his predecessors in interest.

Protests against the granting of the Sharps' applications with the exception of Application No. 12668, Sawmill Spring, were filed April 11, 1949 by John Manzonie of Ely, Nevada, for the reasons and on the grounds that the granting of the applications would impair the value of existing rights now owned and held by the protestant, and would otherwise be detrimental to the public welfare in that it would permit the applicants to graze livestock upon the open range now controlled by waters and water rights held by the protestant, wherefore protestant prays that the applications be denied and that the use of water herein claimed by protestant be confirmed and that an order be entered establishing said rights and for such other relief as the State Engineer deems just and proper.

FIELD INVESTIGATION

On August 22, 1949, at 9:00 a.m. the date and time set in office letter of August 12, 1949, the following people met at Currant, Nevada, for the field investigation of the water sources in controversy and the area in which these water sources are situated:

F. N. Dondero .....	Deputy State Engineer
Elmo J. DeRicco .....	Office and Field Engineer
Leroy, James and Howard Sharp .	Applicants
John Manzonie .....	Protestant
Howard Gray .....	Attorney for John Manzonie
Emery Garrett .....	Protestant
Frank Callaway .....	For Emery Garrett
Johnnie and Dellie Manzonie ...	Sons of Protestant John Manzonie.

By means of automobiles and trucks loaded with horses the above-named people traveled some 19 miles southerly to the camping place. Not being enough saddle horses for all, the field trip was made by F. N. Dondero, Elmo J. DeRicco, Frank Callaway, Leroy Sharp, James Sharp, Howard Sharp and Dellie Manzonie. Rain and misty weather made the trip disagreeable. All of the water sources in the Andrews-Heath Range were investigated. Report of this investigation dated August 29, 1949 is in file No. 12665, reference to which is hereby made.

ANDREWS-HEATH RANGE

Andrews-Heath Range is a mountainous region about five miles wide and about 13 miles long in a northerly and southerly direction. Its upper reaches are covered with a dense growth of junipers, pinion pines and unusually tall sage brush. The general drainage is toward the west with canyons opening out westerly into Railroad Valley.

The maximum distances between the outer springs in this area is about ten and one-half (10½) miles in a northerly and southerly direction; as between Old Sawmill Spring, the most southerly one, and Andrews Spring, the most northerly one; and about three and three-quarters (3 ¾) miles easterly and westerly; as between Big Spring on the east and Cazier Spring the most westerly spring.

#### HEARING

On August 30, 1949, the date set in the State Engineer's official notice of August 10, 1949, a hearing was held at 10:00 a.m. in the County Court Room at Tonopah, Nye County, Nevada. The hearing ended at 1:25 p.m. August 31, 1949.

APPEARANCES were as follows:

For the Nevada State Engineer's Office:

Hugh A. Shamberger, Assistant State Engineer  
F. N. Dondero, Deputy State Engineer

For the Applicants:

Peter Breen, Esq., Attorney-at-Law,  
Goldfield, Nevada

For the Protestant, Emery Garrett:

Wm. J. Crowell, Esq., Attorney at Law,  
Tonopah, Nevada

For the Protestant, John Manzonie:

C. E. Horton, Esq., of the firm of Gray  
& Horton, Attorneys-at-Law, Ely, Nevada

WITNESSES were as follows:

For the Protestants:

Emery Garrett, Protestant  
Frank Callaway  
James C. Riordan  
E. S. Giles  
John Manson  
John Manzoni  
Ted Williams  
Jack Bordoli

For the Applicants:

Leroy Sharp  
James Sharp  
Howard Sharp  
Donald Eldridge

## GENERAL

The controversy is over the right to waters and to range livestock in what is referred to as the Andrews-Heath territory of the unsurveyed public lands of the United States. The area covered is approximately five to six miles wide and approximately 12 to 13 miles long in a northerly and southerly direction. The springs lie on the easterly side.

The issue is between applicants Leroy, James and Howard Sharp, sometimes referred to as the Sharp brothers, who have ranching properties in Railroad Valley lying westerly and adjacent to the Andrews-Heath Range and the protestants Emery Garrett and John Manzonie, who own ranching properties on Currant Creek some 11 miles northerly from the Andrews Spring, the northerly most spring in the Andrews-Heath Range.

The Sharp cattle enter the Andrews-Heath Range from the west through Heath, Beatty and Johnson Canyons. The Currant Creek cattle are driven southeasterly down a wide dry wash to ~~Callaway~~ Well thence southerly to and up Morgan Canyon or basin thence to the Andrews-Heath Range some 19 or so miles by road and trails from Currant.

## RULING

Regardless of the allegations, made at the hearings, that the carrying capacity of the so-called Andrews-Heath Range is very limited, we find that it has been peacefully and unmolestedly used by all concerned for many years for grazing purposes with varying number of cattle and some horses.

Other than the trespass action of 1948 instituted by Emery Garrett against the Sharps; protest to the Bureau of Land Management against the Sharps to exchange certain range rights in about March 1948, and the Nevada State Engineer's Ruling of March 26, 1927, we find that the Sharp family has continuously, openly and peaceably grazed their cattle in the so-called Andrews-Heath Range from the year 1924, at which time they began with 100 head of cattle, which increased to approximately 300 at the time of the father's death in 1934, and then increased to approximately 400 up to approximately 600 cattle at the time of the hearing. The father, George H. Sharp, was granted a permit under Application No. 8422, under which Certificate No. 1792 was issued for watering 125 head of cattle at Blind Spring in the Andrews-Heath Range, with a priority of appropriation of January 5, 1928. We find that the allegations made by the opposition as to the number of Sharp cattle that grazed and watered in the so-called Andrews-Heath Range was very indefinite. Other than the testimony of the Sharps', their cattle were referred to as drifts by others at the hearing.

We firmly believe that in arriving at a decision in this case, the Nevada Range Law (Chapter 226, approved March 30, 1931) must be taken into consideration. Although this act does not mention watering sources, it is understood that water must be in the range in order for the cattle to exist and, therefore, Section 1 of this chapter becomes a part of this ruling in that the Sharp family has established a customary use, or established use as graziers by common use with others, by virtue of the continuous, open, notorious, peaceful and public use of the so-called Andrews-Heath Range for a period of five or more years.

In view of the above findings the protests are overruled and permits will be issued to Leroy, James and Howard Sharp, known as the Sharp Brothers, for watering 350 head of cattle during the summer season upon the payment of the statutory permit fees.

In connection with this ruling it becomes mandatory that the proper title be vested in the Sharp brothers to the right to the waters of Blind Spring, Certificate No. 1792 issued under Permit No. 8422, and to take proper steps to determine the correct location of the point of diversion and place of use of the water. If error is found then legal steps must be taken to make the proper correction.

Respectfully submitted,

HUGH A. SHAMBERGER  
State Engineer

By

*Edmund Muth*  
EDMUND MUTH  
Asst. State Engineer

January 7, 1953