

IN THE MATTER OF APPLICATIONS NOS.)
12170 TO 12213 INCLUSIVE, IN NAME OF : RULING
BARTHOLOMAE CORPORATION, EUREKA COUNTY, :
NEVADA.)

Applications Numbers 12170 to and including 12213 were filed January 16, 1948 by Bartholomae Corporation. A brief abstract of each filing giving the serial number, source, proposed point of diversion, amount applied for, purpose, and the name of protestants is herewith given:

Application 12170 - Fish Creek Well No. 1 - Point of diversion being in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 10, T. 16 N., R. 53 E. Application in amount of 1.75 c.f.s. for the irrigation of 180 acres of land for year round use. Protested April 17, 1948 by John Laxague, et al.

Application 12171 - Antelope Well No. 5 - Point of diversion being in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 28, T. 18 N., R. 50 E. Application in amount of 0.20 c.f.s. for Stockwatering and Domestic purposes. Protested April 14, 1948 by Etchaverry and/or Arambel, and on April 17, 1948 by John Laxague, et al.

Application 12172 - Antelope Well No. 6 - Point of diversion being in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 28, T. 18 N., R. 50 E. Application in amount of 0.25 c.f.s. for the irrigation of 25 acres of land the year around, and for domestic purposes. Protested Apr. 14, 1948 by Pete Etchaverry and/or Bertrand Arambel, and on Apr. 17, 1948 by John Laxague, et al.

Application 12173 - Cow Well - Point of diversion being in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 20, T. 16 N., R. 54 E. Application in amount of 0.20 c.f.s. for the watering of 200 head of cattle the year round. Protested Apr. 17, 1948 by John Laxague, et al.

Application 12174 - Cow Well No. 2 - Point of diversion being in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 6, T. 15 N., R. 54 E. Application in amount of 0.20 c.f.s. for the watering of 200 head of cattle the year round. Protested Apr. 14, 1948 by Bertrand Arambel and on Apr. 17, 1948 by John Laxague, et al.

Application 12175 - Segura Well - Point of diversion being in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 7, T. 16 N., R. 51 E. Application in amount of 0.25 c.f.s. for the watering of 600 head of cattle the year round. Protested Apr. 14, 1948 by Bertrand Arambel and on Apr. 17, 1948 by John Laxague, et al.

Application 12176 - Klobe Hot Springs Channel - Point of diversion being in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 28, T. 18 N., R. 50 E. Application in amount of 0.25 c.f.s. for the watering of 200 head of cattle the year around. Protested Apr. 14, 1948 by Pete Etchaverry and/or Bertrand Arambel, and on Apr. 17, 1948 by John Laxague, et al.

Application 12177 - Faulkner Creek Channel, Diversion No. 1 - Point of diversion being in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 29, T. 18 N., R. 50 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Pete Etchaverry and/or Bertrand Arambel, and on Apr. 17, 1948 by John Laxague, et al.

Application 12178 - Faulkner Creek Channel, Diversion No. 2. - Point of diversion being in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 27, T. 18 N., R. 50 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Pete Etchaverry and/or Bertrand Arambel, and on Apr. 17, 1948 by John Laxague, et al.

Application 12179 - Dagget Creek - Point of diversion being in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 8, T. 18 N., R. 50 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Pete Etchaverry and/or Bertrand Arambel; Protested Apr. 17, 1948 by John Laxague, et al; and protested April 20, 1948 by Alma Woods.

Application 12180 - Dagget Creek - Point of diversion being in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 4, T. 18 N., R. 50 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested April 14, 1948 by Pete Etchaverry and/or Bertrand Arambel; Protested April 17, 1948 by John Laxague, et al; and protested April 20, 1948 by Alma Woods.

Application 12181 - Dagget Creek - Point of diversion being in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 35, T. 19 N., R. 50 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Pete Etchaverry and/or Bertrand Arambel; Protested Apr. 17, 1948 by John Laxague, et al; and protested April 20, 1948 by Alma Woods.

Application 12182 - Allison Creek, Diversion No. 1 - Point of diversion being in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 29, T. 17 N., R. 50 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Pete Etchaverry and/or Bertrand Arambel and on Apr. 17, 1948 by John Laxague, et al.

Application 12183 - Allison Creek No. 2 - Point of diversion being in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 35, T. 17 N., R. 50 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Pete Etchaverry and/or Bertrand Arambel and on April 17, 1948 by John Laxague, et al.

Application 12184 - Sullivan Creek - Point of diversion being in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 32, T. 17 N., R. 50 E. Application in amount of 0.20 c.f.s. for the watering of 200 head of cattle the year round. Protested Apr. 14, 1948 by Pete Etchaverry and/or Bertrand Arambel and on Apr. 17, 1948 by John Laxague, et al.

Application 12185 - Cockalorum Channel, Diversion No. 1 - Point of diversion being in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 20, T. 15 N., R. 52 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested April 17, 1948 by John Laxague, et al.

Application 12186 - Cockalorum Channel, Diversion No. 2 - Point of diversion being in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 27, T. 15 N., R. 52 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested April 17, 1948 by John Laxague, et al.

Application 12187 - Cockalorum Channel, Diversion No. 3 - Point of diversion being in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 18, T. 15 N., R. 53 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Bertrand Arambel and on Apr. 17, 1948 by John Laxague, et al.

Application 12188 - Cockalorum and Fish Creek Valley Channels, Diversion No. 4 - Point of diversion being in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 29, T. 15 N., R. 53 E. Application in amount of 1.0 c.f.s. for the watering of 800 head of cattle the year round. Protested Apr. 17, 1948 by John Laxague, et al.

Application 12189 - Fish Creek Valley Channel, Diversion No. 5 - Point of diversion being in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 15, T. 15 N., R. 53 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested April 14, 1948 by Bertrand Arambel and on Apr. 17, 1948 by John Laxague, et al.

Application 12190 - Fish Creek Valley Channel, Diversion No. 6 - Point of diversion being in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 2, T. 15 N., R. 53 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Bertrand Arambel and on Apr. 17, 1948 by John Laxague, et al.

Application 12191 - Fish Creek Valley Channel, Diversion No. 7 - Point of diversion being in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 26, T. 16 N., R. 53 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Bertrand Arambel and on Apr. 17, 1948 by John Laxague, et al.

Application 12192 - Fish Creek Valley Channel, Diversion No. 8 - Point of diversion being in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 18, T. 16 N., R. 54 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 17, 1948 by John Laxague, et al.

Application 12193 - Wino Mile Canyon Channel and Antelope Valley Channel, Diversion No. 1 - Point of diversion being in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 31, T. 16 N., R. 51 E. Application in amount of 1.0 c.f.s. for the watering of 600 head of cattle the year round. Protested Apr. 2, 1948 by Fernando Segura; Protested Apr. 14, 1948 by Pete Etchaverry and Bertrand Arambel and on April 17, 1948 by John Laxague, et al.

Application 12194 - Antelope Valley Channel, Diversion No. 2 - Point of diversion being in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 24, T. 16 N., R. 50 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, by Pete Etchaverry and Bertrand Arambel and on Apr. 17, 1948 by John Laxague, et al.

Application No. 12195 - Antelope Valley Channel, Diversion No. 3 - Point of diversion being in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 7, T. 16 N., R. 51 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Pete Etchaverry and Bertrand Arambel and on Apr. 17, 1948 by John Laxague, et al.

Application 12196 - Antelope Valley Channel, Diversion No. 4 - Point of diversion being in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 30, T. 17 N., R. 51 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Pete Etchaverry and Bertrand Arambel and on Apr. 17, 1948 by John Laxague, et al.

Application 12197 - Antelope Valley Channel, Diversion No. 5 - Point of diversion being in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 18, T. 17 N., R. 51 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Pete Etchaverry and Bertrand Arambel and on Apr. 17, 1948 by John Laxague, et al.

Application 12198 - Antelope Valley Channel, Diversion No. 6 - Point of diversion being in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 31, T. 18 N., R. 51 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Pete Etchaverry and Bertrand Arambel and on Apr. 17, 1948 by John Laxague, et al.

Application 12199 - Fish Creek Well Canyon Channel, Diversion No. 1 - Point of diversion being in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 15, T. 17 N., R. 52 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 17, 1948 by John Laxague, et al.

Application 12200 - Fish Creek Well Canyon Channel, Diversion No. 2 - Point of diversion being in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 17, T. 17 N., R. 52 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 17, 1948 by John Laxague, et al.

Application 12201 - Fish Creek Well Canyon Channel, Diversion No. 3 - Point of diversion being in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 11, T. 17 N., R. 51 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Pete Etchaverry and Bertrand Arambel, and on Apr. 17, 1948 by John Laxague, et al.

Application 12202 - Fish Creek Well Canyon Channel, Diversion No. 4 - Point of diversion being in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 9, T. 17 N., R. 51 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Pete Etchaverry and Bertrand Arambel and on Apr. 17, 1948 by John Laxague, et al.

Application 12203 - Fenstermaker Channel, Diversion No. 1, - Point of diversion being in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 5, T. 15 N., R. 52 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Pete Etchaverry and Bertrand Arambel and on Apr. 17, 1948 by John Laxague, et al.

Application 12204 - Fenstermaker Channel, Diversion No. 2 - Point of diversion being in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 29, T. 16 N., R. 52 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Pete Etchaverry and Bertrand Arambel and on Apr. 17, 1948 by John Laxague, et al.

Application 12205 - Fenstermaker Channel, Diversion No. 3 - Point of diversion being in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 7, T. 16 N., R. 52 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Pete Etchaverry and Bertrand Arambel and on Apr. 17, 1948 by John Laxague, et al.

Application 12206 - Fenstermaker Channel, Diversion No. 4 - Point of diversion being in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 2, T. 16 N., R. 51 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Pete Etchaverry and Bertrand Arambel and on Apr. 17, 1948 by John Laxague, et al.

Application 12207 - Fenstermaker Channel, Diversion No. 5 - Point of diversion being in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 28, T. 17 N., R. 51 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Pete Etchaverry and Bertrand Arambel and on Apr. 17, 1948 by John Laxague, et al.

Application 12208 - Cedar Creek Channel, Diversion No. 1 - Point of diversion in SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 6, T. 17 N., R. 50 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Pete Etchaverry and Bertrand Arambel.

Application 12209 - Cedar Creek Channel, Diversion No. 2 - Point of diversion being in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 34, T. 16 N., R. 50 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Pete Etchaverry and Bertrand Arambel and on Apr. 17, 1948 by John Laxague, et al.

Application 12210 - Cedar Creek Channel, Diversion No. 3 - Point of diversion being in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 26, T. 18 N., R. 50 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Pete Etchaverry and Bertrand Arambel and on Apr. 17, 1948 by John Laxague, et al.

Application 12211 - Antelope Meadow Channel, Diversion No. 1 - Point of diversion being in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 7, T. 18 N., R. 51 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Pete Etchaverry and Bertrand Arambel and on Apr. 17, 1948 by John Laxague, et al.

Application 12212 - Antelope Meadow Channel, Diversion No. 2 - Point of diversion being in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 6, T. 18 N., R. 51 E. Application in amount of 1.0 c.f.s. for the watering of 300 head of cattle the year round. Protested Apr. 14, 1948 by Pete Etchaverry and Bertrand Arambel and on Apr. 17, 1948 by John Laxague, et al.

Application 12213 - Fish Creek Channel - Point of diversion being in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 7, T. 16 N., R. 54 E. Application in amount of 1.0 c.f.s. for the watering of 200 head of cattle the year round. Protested April 17, 1948 by John Laxague, et al.

Of the forty-three applications filed, two were to appropriate water for irrigation purposes (12170 and 12172), the balance being for stockwatering purposes. Six of the applications, including the two for irrigation purposes, are to appropriate ground water by means of drilled wells. The balance of the applications are to appropriate water from channels and creeks by means of small check dams.

Following the publication of the applications, and after due notice having been given to all parties concerned, in accordance with law, the matter came on for hearing in Ely, Nevada, on April 7, 8 and 9, 1949. Appearances were as follows:

For Applicant, Bartholomae Corp.	- Howard Gray of the law firm of Gray and Horton, Ely, Nevada.
For Protestant, John Laxague, et al-	Orville Wilson, Attorney, Elko, Nevada.
For Protestant, Bertrand Arambel and/or Pete Etchaverry	- Merley Griswold, Attorney, Reno, Nevada.
For the State Engineer	- Hugh A. Shamberger, Assistant State Engineer.

The transcript of the testimony, together with the Exhibits are of record in the office of State Engineer.

Prior to the taking of any testimony, Attorney Howard Gray, attorney for applicant Bartholomae Corporation, withdrew Applications Nos. 12179, 12180 and 12181 to appropriate water on Dagget Creek. He also announced that he had been authorized by Alma Woods to withdraw her protests on Applications Nos. 12177 and 12178 to appropriate the waters of Faulkner Creek. It should be noted here that the protests of Alma Woods just referred to on Faulkner Creek were received too late for legal filing. Also, on August 19, 1949 Application No. 12193 was withdrawn.

THE PROTESTS:

The protests of John Laxague, et al, to all of the applications excepting 12208, read as follows:

"That the undersigned, personally and through their predecessors in interest, have vested rights to all the waters applied for for stockwatering purposes; that the use of said waters applied for by applicant would violate and destroy the undersigned's grazing rights as established by them under the Nevada Grazing Act of 1931, and would violate the subsisting rights of the undersigned created and established pursuant to the water for livestock Act of 1925, and would violate in particular rights of undersigned defined by Section 5581, N.C.L., Supp. 1931-1941, and Sections 7979 through 7984, N.C.L., 1929; that applicant does not have rights under either the Nevada Grazing Act of 1931, or the water for livestock Act of 1925, in numbers allowing for said additional water herein applied for.

That the use of said waters by applicant will seriously conflict with the rights of the undersigned, and their customary use of the range and waters.

Wherefore, protestants pray that the application be denied and that the use of water herein claimed by protestants be confirmed and that an order be entered establishing said right and for such other relief as the State Engineer deems just and proper."

The above protest was filed in the name of John Laxague, Oscar Rudnick, Sam Rudnick and John Brown. Mr. Laxague is successor to the Eureka Land & Stock Company and Messrs. Rudnick, Rudnick and Brown are purchasing rights from John Laxague.

The protests of Bertrand Arambel and/or Pete Uchaverry to the granting of permits on all the applications excepting the

following: 12170, 12173, 12175, 12176, 12178, 12192, 12199, 12200 and 12213, is as follows:

"That Protestants, and each of them are informed and believe, and therefore allege the fact to be, that the above application as filed is for the purpose of acquiring range rights and not for the purpose of appropriating water; that your Protestants, and each of them protest the said application, on information and belief, upon the following grounds: That other livestock users, including your Protestants, have acquired range rights in the vicinity and within three miles of said application, and that the granting of said application will interfere with trail rights and privileges."

THE HEARING:

The hearing on these applications consumed three days, April 7, 8 and 9, 1949 and some eighteen witnesses testified. We have carefully studied the testimony submitted, as well as other pertinent data available in the Office of State Engineer. A subsequent field trip was taken to better acquaint ourselves with the nature of the country involved. It will also be remembered that a year or so prior to this hearing a hearing had been held in Tonopah involving a number of applications filed by Locke and Titus in the Dry Lake and Sand Springs areas southerly from the area involved here. Protestants in that case included the protestants here, together with other sheepmen from Elko County. We are therefore well versed in the routes followed by the sheep and their general operation.

STATUS OF LAND AREA INVOLVED:

Thirty-six of the thirty-nine applications under consideration here are to appropriate water in Eureka County. The public domain area in this portion of Eureka County is not as yet under the supervision of the Bureau of Land Management. Therefore, in acting on these applications we must consider the provisions of the 1925 Stockwater Act (Chapter 201, Stats. 1925). The other three applications, being Applications Nos. 12185, 12186 and 12188, are located in Nye County, just south of the Eureka-Nye County line, and are within Grazing District No. 4.

GENERAL:

The operation of Eureka Land & Stock Company,
John Laxague and Eureka Livestock Company

In January 1933 the Eureka Land & Stock Company split their holdings. The Fish Creek and the Antelope divisions were sold to Isadore Sara, who, prior to that time, was one of the principal stockholders and president of the Company. Following this division, the

operation of the Eureka Land & Stock Company was changed somewhat. They still retained their Robert Creek properties as well as range rights in the Squaw Mountain area in Elko County. They continued their use of their winter range area from Deep Well southerly. Their change of operation was solely in the area covered by the Bartholomae applications, namely the Antelope & Fish Creek areas. After the division in 1933, the Eureka Land & Stock Company had only a trail right from about U. S. Highway 50 south of Lone Mountain through to Deep Well, together with a permanent right to water livestock at a spring located near the northwest end of the Antelope Springs Ranch.

It is important that we carefully view the provisions set forth in the deed from the Eureka Land & Stock Company to Isadore Sara dated January 11, 1933 and filed as Protestant's Exhibit B. This deed conveys the Fish Creek and Fenstermaker Ranch properties, consisting of 2438 acres; the Antelope Ranch consisting of 524 acres; and the Faulkner Place and Klobe Hot Springs properties containing 160 acres. In addition, the deed conveyed all water rights and stockwatering rights and privileges used in connection with said properties.

However there was reserved by the Eureka Land & Stock Company a permanent right to water livestock at Antelope Springs with the provision that such right may be exercised only in moving livestock from one range to another. That such right was restricted to a trailing operation is evident by the language "that is to say, the said livestock are not to be held for watering at said watering place for more than one day in succession-----". This deed also granted to Isadore Sara a permanent & perpetual right to water livestock at Deep Well No. 1 located just south of the Eureka and Nye County line in Nye County. The water right at Deep Well No. 1 is covered by Permit No. 4592 in name of Eureka Land & Stock Company. The operation by Isadore Sara being cattle, and that of the Eureka Land & Stock Company being sheep, the deed separated the range area appurtenant to Deep Well No. 1 between the two outfits, the cattle to be ranged northerly from a certain gulch extending easterly and westerly from said well. Protestant's Exhibit A, being a map prepared by F. W. Millard & Son for Applicant Bartholomae Corporation, was used to illustrate the dividing gulch and the respective range allotments around Deep Well No. 1. Protestant's witness, Leon Ardans, identified this gulch as Fish Creek Valley Channel. However, it should be pointed out that the course of this channel is more northerly and southerly than it is easterly and westerly. Applicant's witness, Isadore Sara (who is a son of the Isadore Sara mentioned in the deed of January 1933) further identified the Fish Creek Valley Channel as being the gulch referred to and which divided the range area appurtenant to Deep Well No. 1. He also marked on Protestant's Exhibit A (map) the two blocks of range used in connection with this range. He identified the two areas as "A" and "B", the "A" area being the area used in the operation of Isadore Sara.

The general outline of the sheep trail route of the Eureka Land & Stock Company from Lone Mountain to Deep Wells as testified to by Leon Ardans, Fermin Espanol, and others, is shown on Protestant's Exhibit A. This is also the trail route formerly used by Cadot Anzio (who has been succeeded by Dan Clark), Pete Corta and lately by Pete Etchaverry. With the exception of the Eureka Land & Stock Company, none of the other sheep outfits have any right to the use of water between Lone Mountain and Deep Well and must depend entirely on snow water. The trail, as outlined, comes from Lone Mountain southerly, passing the Antelope Ranch on the east, thence southerly to the mouth of Fenstermaker Wash, thence following the general course of Fenstermaker Wash over Antelope Summit to Deep Well. When there is no snow during the trip south, the sheep of the Eureka Land & Stock Company were watered at Antelope Springs and during some dry years were allowed to water at Lower Davis Spring. The other sheep, having no watering privileges along the trail, come south at a later date. In going north in the Spring the sheep followed the same general trail, but usually kept a little further to the east, the route depending on snow conditions.

In 1946 the Eureka Land & Stock Company was purchased by John Laxague, one of the principal stockholders. Subsequently, Mr. Laxague sold on contract all of his interests to Oscar Rudnick, Sam Rudnick and John Brown who operate under the name of Eureka Livestock Company. Testimony was given that the operation of the sheep under the present owners was the same as that of the Eureka Land & Stock Company.

There is no question in our minds that the trail from Lone Mountain southerly to Deep Well is a long established trail route that must be recognized. That such trail right was recognized is evident in the language used in the deed from Eureka Land & Stock Company to Isadore Sara. This deed conveys no trail right, but does carry the right to "trail water" from Antelope Springs. In this deed the Eureka Land & Stock Company conveyed all water rights, range rights, etc. used in connection with the Fish Creek, Antelope, Faulkner and Klobe Hot Springs ranches to Isadore Sara. They retained no rights in Antelope Valley and Little Smokey Valley in Eureka County, except the right to water from Antelope Springs while trailing through. In view of this, it is difficult for us to understand the protest of John Laxague, et al, wherein it is stated that "protestants have vested rights to all the water applied for for stockwatering purposes -----that the use of the waters applied for would destroy protestant's grazing rights, etc." In the aforementioned deed all of the rights, both water and grazing in Antelope and Little Smokey Valleys in Eureka County, were conveyed to Sara who subsequently conveyed the same rights to Applicant Bartholomae Corporation. During the interval from 1933 to the present time, we have no knowledge of the Eureka Land & Stock Company, John Laxague or the Eureka Livestock Company having acquired any water or grazing rights in this area. As we view the situation, the only right the Eureka Livestock Company has is a trail right from Lone Mountain to Deep Well, together with the right to use trail water from Antelope Springs, and the grazing area in the vicinity of Deep Wells Nos. 1 and 2.

The operation of Bartholomae Corporation

In December 1941 Isadore Sara, et al, deeded to Bartholomae Oil Corporation all of the rights he had acquired from the Buroka Land & Cattle Company in 1933. The same covenants and reservations as contained in the 1933 deed to Isadore Sara were included in the deed to Bartholomae Oil Corporation. A copy of this deed was offered in evidence as Applicant's Exhibit No. 2.

In October of 1942 Bartholomae Oil Corporation purchased certain water and range rights from Fernando Segura. The water rights purchased were the following:

Certificate No. 1777 issued under Permit No. 4124
(Upper Davis Spring)

Certificate No. 1778 issued under Permit No. 4125
(Lower Davis Spring)

Certificate No. 1779 issued under Permit No. 4126
(Kinkead Springs)

Certificate No. 1780 issued under Permit No. 4127
(Number Four Spring)

These springs are all located in and near the S.E. Corner of T. 16 N., R. 51 E. In addition, there was conveyed certain range rights claimed by Segura and which was described in said deed. In brief, the area is bounded as follows :

Starting near the mouth of Nine Mile Canyon on the west side line of Section 30, T. 16 N., R. 51 E., thence northeasterly about seven miles to the NW Corner Sec. 35, T. 17 N., R. 51 E. on Fenstermaker Channel and being about one mile southeasterly from Antelope Well No. 2; thence southeasterly along Fenstermaker Channel some 8 1/2 miles to the divide between Fenstermaker Channel and Cockalorum Channel; thence following said summit westerly about six miles to the head of Nine Mile Canyon and thence northwest- orly along Nine Mile Canyon about five miles to the point of beginning.

To further consolidate its holdings, the Bartholomae Oil Corporation purchased the old Palmer ranch sometimes called the Ardan Ranch on Allison Creek from George Ardans, et al. This deed, dated October 1942, was submitted as Applicant's Exhibit No. 4. This deed conveys several pieces of property besides certain water rights. One piece of property, containing about 35 acres, is at the head of Cedar Creek in unsurveyed Sections 7 and 8, T. 17 N., R. 50 E. and being within the Forest Reserve. The deed includes property on Allison Creek in Sections 19, 29 and 30, T. 17 N., R. 50 E. and in unsurveyed Section 24, T. 17 N., R. 49 E. within Forest Reserve; also, land at the headwaters of Sullivan Creek in Sections 30 and 31, T. 17 N., R. 50 E. The water rights deeded include the following:

Certificate 403 issued under Permit No. 2231
on Cedar Creek for irrigation purposes.

Certificate No. 1491 issued under Permit No. 7298⁷²⁸⁹
on Cerruti Well No. 1 - Sec. 25, T. 17 N., R.
50 E. for stockwatering.

Certificate No. 1492 issued under Permit No. 7290
on Cerruti Well No. 2 - Sec. 17, T. 16 N., R.
51 E. for stockwatering.

Certificate No. 2192 issued under Permit No. 9095
on Mabey Well - Unsurveyed Sec. 22, T. 17 N.,
R. 51 E. for stockwatering.

Certificate No. 2193 issued under Permit No. 9096
on Big Pump Well - Sec. 3, T. 17 N., R. 51 E.
for stockwatering.

Application No. 3741 to appropriate water from Segura
Well in Sec. 6, T. 16 N., R. 51 E. (This applica-
tion unacted on to date.)

This deed conveys all grazing rights, both on the public domain and Toiyabe National Forest, connected with, belonging, appurtenant or incident to the lands conveyed. This is the same property that Firmine Espanol, one of protestant's witnesses, testified that he at one time owned and operated as a sheep outfit.

On January 14, 1943 certain water rights and range rights were purchased from Angelo Florio. Copy of this deed was offered as Applicant's Exhibit No. 5. The water rights transferred include the following:

Certificate No. 1598 issued under Permit No. 8514
(Rock Spring)

Certificate No. 1594 issued under Permit No. 8753
(Hoover Spring)

Also, Martolletti Spring No. 2 and Mahogany Spring
lying close to Hoover Spring.

All of these water rights are grouped close together in about Sections 11 and 14, T. 17 N., R. 52 E., unsurveyed. Mr. Florio also conveyed all of his range rights and water rights located upon the public domain in Eureka County lying south of a boundary line that can briefly be described as follows:

Starting at a point on the Eureka-White Pine County line which is due east of a point one-half mile north of proposed Fish Creek Well No. 4; thence west to said point one-half mile north of proposed Fish Creek Well No. 4; thence northwesterly on a straight line to a point at the top of the ridge marking the water divide between Clover Spring and

Hoover Spring; thence along said ridge to and across a gap through which an old road passes, and continuing along the top of the ridge immediately west of said gap down to Fish Creek Mine Wells; thence westerly on a straight line to a point 200 feet north of Antelope Well No. 1; thence due west on a straight line to west boundary of grazing area claimed by Florio.

In addition to the water rights purchased from Ardans, Segura and Florio, as above listed, the Bartholomae Corporation is the recorded owner of a number of additional water rights in Antelope and Fish Creek Valleys and which are listed as follows:

Certificate No. 2820 issued under Permit No. 11031 on Bartholomae Well No. 1 for irrigation purposes. Point of diversion is in Section 30, T. 18 N., R. 51 E. and being just southerly of Antelope Ranch.

Permit No. 11064 on Antelope Well No. 7 for irrigation purposes, located in Section 18, T. 18 N., R. 51 E. and on the Antelope Ranch.

Permit No. 11065 on Antelope Well No. 8 for irrigation purposes located in Sec. 30, T. 18 N., R. 50 E. and being just easterly of Bartholomae Well No. 1.

Certificate No. 2746 issued under Permit No. 10904 on Antelope Well No. 2 for stockwatering purposes. Point of diversion is in Sec. 27, T. 17 N., R. 51 E., unsurveyed, and being near the mouth of Fenstermaker Channel.

Certificate No. 2745 issued under Permit No. 10859 on Antelope Well No. 1 for stockwatering purposes. Said well is located in Sec. 7, T. 17 N., R. 52 E., unsurveyed and being on Fish Creek Well Canyon Channel about four miles westerly of Rock Springs.

Certificate No. 2761 issued under Permit No. 10908 on Fish Creek Well No. 4 for stockwatering purposes. Location of well is in Sec. 29, T. 17 N., R. 53 E. and about three miles north of Fish Creek Ranch.

Certificate No. 973 issued under Permit No. 4889 on Fish Creek Springs for irrigation purposes. These springs are located on the Fish Creek Ranch.

Certificate No. 2797 issued under Permit No. 10907 for stockwatering purposes from Fish Creek Well No. 3 located in Sec. 30, T. 16 N., R. 53 E.

Certificate No. 2747 issued under Permit No. 10906 for stockwatering purposes from Fish Creek Well No. 2 located in Sec. 13, T. 15 N., R. 52 E. and being about four miles northwesterly from Deep Well and just off the road from Fish Creek to Willow Creek.

In addition to the holdings that have been listed, the Bartholomae Corporation has the Bartine Ranch under lease.

The Bartholomae Corporation maintains a cattle operation only in this area. Mr. Bartholomae testified that they operated about three thousand head of herford cattle. That their winter range is around the Fish Creek area in Little Smokey Valley, and the summer range is in Antelope Valley and also within the Forest Reserve, westerly of Antelope Valley. Mr. Bartholomae testified that they trailed their cattle to the summer range in Antelope Valley about June and are returned to the Fish Creek area around the first of November; that the bulls are kept at the Ardano' ranch through the winter; and that the purpose of the applications was to properly develop the area.

The operation of Bertrand Arambel and Pete Etchaverry:

The operations of Arambel and Etchaverry are well documented in the transcript of the hearing at Ely. Bertrand Arambel and Pete Etchaverry are partners in a sheep operation which has been developed since about 1940. Together they own the following properties:

Ferguson Ranch purchased 1940
Brackney " " 1941
Willow Creek Ranch (Nye County) purchased 1943
Lake Ranch purchased 1943
Piute " " 1945
Willow Creek Ranch purchased 1943.

The Ferguson Ranch is located about 19 miles northwesterly from Bartine's place on U. S. Highway 50. The Brackney Ranch is about ten miles westerly from the Ferguson ranch and is within the Grass Valley drainage area. The Lake and Willow Creek ranches are located near Austin. The other Willow Creek ranch is in Nye County and about ten or twelve miles southwestly from Deep Well. Piute Ranch is located southeasterly from Eureka on Highway 50.

The testimony was that Pete Etchaverry handled the sheep operations from the Ferguson and Brackney ranches and Arambel handled the sheep operations from Lake and Willow Creek (Lander County) ranches. In trailing the sheep to the winter range Etchaverry would trail westerly from the Ferguson ranch and across the flat to the hills a few miles northerly from Lone Mountain. Then he would turn south and follow the general trail along the east side of Antelope Valley which was the trail used by the Eureka Livestock Company in traveling southerly from Robert's Creek. When reaching Cockalorum Channel after coming through Fenstermaker Channel they would then graze southward towards Willow Creek. From Lone Mountain to Cockalorum they were trailing and using snow. In going north in the Spring they would go from Lower Willow Creek northward to Pinto Ranch and then follow the highway, turning north at Lone Mountain

and following the same trail from then on as he used in going south in the late Fall. The routes Etchaverry took were accepted trail routes.

The operation of Arambel from the Lake and Willow Creek ranches was altogether different. He testified that he trails along Highway 50 below Alma Woods' Willow Station ranch, watering at the gravel pit and leaving the highway west of Twin Springs, trailing south-erly on the west side of Antelope Valley until he reaches the vicinity of the Palmer Ranch (now Bartholomae's) and then crossing the valley to Nine Mile Canyon, then following Nine Mile Canyon towards Willow Creek mountains. In returning north in the Spring he goes from lower Willow Creek over Antelope Summit and down Fenstermaker Channel and crosses to the west side of Antelope Valley in the vicinity of the Palmer Ranch, thence northerly to U. S. Highway No. 50 where he waters the sheep from tanks.

His trailing down the west side of Antelope Valley first started in either 1944, 1945 or 1946, the testimony being rather vague about this.

Using the west side of Antelope Valley as a trail route has been strenuously objected both by Alma Woods and Bartholomae Corpora-tion. It is assumed that in trailing between the Highway and the Palmer Ranch he keeps just outside of the Forest Reserve and passes through or near the Faulkner, Klebo Hot Springs and the Palmer (Ardans) Ranch properties now belonging to Bartholomae Corporation. Also, this trail followed by Arambel parallels the general course of the estab-lished trail on the east side of the valley and is only about 5 or 6 miles westerly.

Much testimony was introduced by Counsel for Protestant Arambel and Etchaverry as to the necessity of using this route on the west side rather than using the established trail down the east side of Antelope Valley. The principal reasons being that in order to reach the trail used by Etchaverry from the Ferguson ranch the sheep being trailed from the Lake and Willow Creek ranches would have to travel considerable further and that to cross the flat in the vicinity of the Bartino Ranch would be dangerous due to the poisonous brush (greasewood), that, according to certain witnesses for Protestant Arambel and Etchaverry, grows abundantly in this area.

It is to be remembered that the Arambel-Etchaverry operation has developed only within the last few years. The question here, as we see it, is this: Does a person, by virtue of purchasing certain ranches, have the right to establish a new trail directly across the range area of another person so that he can operate his ranches as a unit, when prior to such purchase there was no connection between the ranches: In other words, can "A", by purchasing ranch "X" on one side of "B" range area and purchasing ranch "Y" on the other side of "B" range area claim the right to establish a trail between X and Y through "B's" range? We do not consider that he has a legal right to do so.

The stock industry, both sheep and cattle, is an old and well established industry. Range areas have been established, and appurtenant to such range rights, and of necessity, trail rights have also been established. These trail rights must be protected. To create a new trail route through the range area of another without just compensation would not be equitable.

FINDINGS:

It appears to us that the applicant, Bartholomae Corporation, has a clearly defined range right to the area outlined on its Eureka County range map, which was offered as Protestant's Exhibit "B", with certain possible exceptions. These exceptions, being the area northerly from Dagget Creek and near U. S. Highway 50; the area in T. 16 N., R. 50 E. which to some extent is used by Segura, and the area in the vicinity of Cow Wells Nos. 1 and 2 and Deep Well No. 2. These areas mentioned are at the outer edges of the range area claimed by Bartholomae Corporation. The land, water rights and range rights purchased, first from Isodoro Sara, then from Ardan, Segura and Florio, consolidated all the range and water rights in this area under one ownership.

We have failed to find where protestants John Laxague et al have any range or water rights in the area covered by the applications under consideration here, with the exception of the range right in the vicinity of Deep Well as more or less outlined in Protestant's Exhibit "B" and marked "A", and the right to water from Antelope Springs when trailing through.

We have also failed to find where Protestants Arambel and/or Etchaverry have any range or water rights in the area under consideration here with the possible exception of the small area in Eureka County lying southerly of the summit of the hills between the heads of Nine Mile Canyon and Fenstermaker Channel.

It seems clear that the sheep trail outlined on Protestants Exhibit B from Lone Mountain southerly to the mouth of Fenstermaker Channel, thence southwestorly up said channel to near its head and then running easterly to Deep Well is the established sheep trail which must be recognized.

From the testimony given at the hearing it appears that protestants seem to feel that the granting of permits under the various applications, especially those near the sheep trail, might convey to applicant certain rights under the 1925 Stockwatering Act that would be detrimental to the trailing operations. It must be remembered that all permits are issued subject to existing rights and this certainly includes the right to use an established trail route.

It should also be pointed out here that applicant is the owner of a number of stockwatering rights in close proximity of the trail route, namely Fish Creek Well No. 2, Antelope Well No. 2, Mabey Well, Antelope Well No. 1 and Big Pump Well. These are already established rights.

The evidence does not show that Arambel has established a driveway along the west side of the valley. We are of the opinion that a new driveway along the west side of the valley would prove detrimental to existing range rights when only a few miles to the east there is an established driveway. We realize that the problem of getting the sheep across the Bartine flat may present some difficulties, but we believe that such difficulties can be surmounted.

Of the thirty-nine applications to be acted upon in this proceeding, only six are for ground-water from wells. Two of these six applications (12170 and 12172) are for irrigation purposes. Under Application No. 12170 water is to be used on the Fish Creek Ranch and under Application No. 12172 the water is for the irrigation of 25 acres of land on the Klobe Hot Springs property. Two of the ground water applications, namely 12173 and 12174 are to appropriate water from Cow Well Nos. 1 and 2 respectively. These wells are already dug and were the subject of a State Engineer's ruling in 1942. Of the remaining two ground water applications, one (12175) is for the Segura Well which is also covered by Application No. 6741 in name of Bartholomae Corporation, and the other for a stockwatering well near Klobe Hot Springs under No. 12171.

The remaining thirty-three applications are to appropriate surface water by constructing small check dams in various channels. Applicant Bartholomae, in his testimony, stated that the purpose of the applications was to allow a better use of the range. We feel such practice is commendable and beneficial to the State when it can be done without being detrimental to existing rights. In traveling over the area, especially that portion along Fenstermaker Channel, there is evidence of considerable erosion in places. Such check dams as contemplated will, besides providing for early spring water, tend to check such erosion which is also good conservation practice.

We fail to find where the granting of these applications, with the exception of five hereinafter delineated, would prove detrimental to the public interest. It appears to us that the granting of permits under Applications Nos. 12185, 12186 and 12188 on Cockalorus Channel in Nye County might prove detrimental to existing grazing rights of Arambel to the south.

We hold that Applications Nos. 12173 and 12174 on Cow Wells Nos. 1 and 2 should be denied for the following reasons: These wells were drilled by Angelo Florio and applied for under Applications Nos. 9398 and 9411 which were protested by the Eureka Land & Stock Company. After a hearing, a ruling was issued in 1942 denying these two applications, which ruling was appealed. Cow Well No. 1, under Application No. 12173, is located about 2 or 3 miles southeasterly from Fish Creek Ranch and within 3/4 of a mile of the White Pine County line. The U. S. Indian Service purchased Florio's rights and have a grazing right in District 4 easterly from said county line. Cow Well No. 2 is located less than 3 miles northeasterly from Deep Well No. 2 on which the Eureka Livestock Company has a water right.

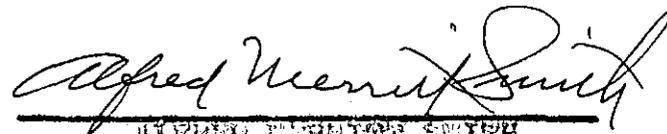
The white sage area outlined on Protestant's Exhibit B by Isadore Sara shows this area reaching nearly to Cow Well No. 2. The granting of a permit on Cow Well No. 1 under Application No. 12174 could well cause interference with the Indian rights in Grazing District 4. To grant a permit under Application No. 12174 on Cow Well No. 2 could no doubt prove detrimental to the existing rights of the Sureka Livestock Company. Furthermore the ruling of the State Engineer denying Applications Nos. 9398 and 9411 filed by Angelo Florio was appealed and to date no action has been taken on the appeal. The Indian Service is the successor to the Florio interests in said Applications Nos. 9398 and 9411.

RULINGS:

The protests to the granting of permits on Applications Nos. 12170, 12171, 12172, 12175 to 12178 inclusive, 12182, 12183, 12184, 12187, 12189 to 12192 inclusive, 12194 to 12213 inclusive are herewith overruled and permits will be granted following receipt of the statutory permit fees.

The protests to the granting of permits on Applications Nos. 12173, 12174, 12185, 12186 and 12188 are herewith sustained and said applications are herewith denied on the grounds that the approval thereof would be detrimental to public welfare.

Respectfully submitted,



ALFRED MERRITT SMITH
State Engineer

Dated May 5, 1950