

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NO. 13372  
FILED BY C. R. MOORMAN AND MILO W. SMITH  
ON MAY 10, 1950 FOR PERMISSION TO APPRO-  
PRIATE WATER OF ILLIPAH CREEK FOR IRRIGA-  
TION PURPOSES AND PROTESTED BY W. C. GOODMAN,  
NEVIN MUNSON, JESSE GARDNER, J. A. ROSEVEAR,  
AND WALTER ROSEVEAR ON JUNE 30, 1950.

RULING

Application No. 13372 was filed May 10, 1950 by C. R. Moorman and Milo W. Smith to appropriate 176.52 acre-feet of the waters of Illipah Creek to supplement irrigation on 720 acres of land having decreed and permitted rights from Illipah Creek. It is proposed under said application to construct a dam and reservoir across the channel of Illipah Creek within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 13, T. 17 N., R. 58 E.

Protest to the granting of said application was filed July 3, 1950 by W. C. Goodman, Nevin Munson, Jess Gardner, J. A. Rosevear and Walter Rosevear on the following grounds:

1. That there is no unappropriated water at the source stated in the application.
2. That the granting of the application would be detrimental to existing stockwatering rights of protestants for livestock which have been grazed in common with those of applicant, C. R. Moorman, on Illipah Creek below the proposed point of diversion for at least as early as the year 1932, and would deprive protestants of stockwatering rights existing from a time prior to the State Engineer's Act of 1907.

On September 1, 1950 a field investigation was conducted by F. N. Dondero, Deputy State Engineer. Present during the investigation, in addition to Mr. Dondero, were the following:

C. R. Moorman & Milo W. Smith - Applicants

Nevin Munson, Jess Gardner,  
J. A. Rosevear and Walter Rosevear - Protestants  
(All ranchers of Upper White River)

W. C. Goodman, one of the protestants, was absent. Jesse L. Kirk of Ely, Nevada, Range Manager of the U. S. Bureau of Land Management, took part in the investigation.

In the report of the field investigation Mr. Dondere reported as follows:

"The use of the water in controversy for grazing livestock in Jakes Valley in which the waters of Illipah Creek flow, was discussed. It was alleged that protestants are the owners as successors in interest to ranches with decreed water rights from White River, dating as far back as 1869, together with the range used in Jakes Valley, in connection with the operation of these ranches. It was also alleged that applicants are the owners as successors in interest to ranches with decreed water rights from Illipah Creek, dating back many years, together with the range used in Jakes Valley in connection with the operation of these ranches. None questioned these allegations. The use of the water of Illipah Creek for grazing purposes in Jakes Valley appeared to be in common with both applicants and protestants.

Illipah Creek is fed by northern and southern tributaries which enter the creek at the Lincoln Highway near the township line of T. 17 N., R's. 58 and 59 E., M.D.B.&M. From this point the creek runs easterly about five miles; thence southerly into Jakes Valley. Mountains separate White River Valley from the southern part of Jakes Valley. The ranch of applicants is some 28 miles northerly of ranches of protestants. During the spring's big run-off the waters spread over the southern flat area causing a miring condition which is detrimental to live stock. The flow of Illipah Creek was estimated at 7.4 c.f.s. on September 26, 1912 by H. M. Payne.

No investigation was made of the dam site under Application No. 13372. Inspection of Jakes Valley disclosed ditches and branch ditches that convey the waters of Illipah Creek to small reservoirs or ponds situate in approximately Sections 28 and 30, T. 17 N., R. 60 E., M.D.B.&M., and in Sections 2 and 14, T. 16 N., R. 59 E., M.D.B.&M., and in Section 30, T. 16 N., R. 60 E., M.D.B.&M. Although these stockwatering

facilities were dry, evidence showed that water had been impounded for watering livestock. These improvements were the results of Lew Casier, Albert Williams and C. R. Moorman making it possible to control the water from spreading over the valley, thus eliminating the mire that was detrimental to stock operations. This was alleged by all present.

There is no doubt that both applicants and protestants ranged and watered their livestock in Jakes Valley many years past. Records in the State Engineer's office do not show that applicants and protestants had any legal right to divert and impound water from Illipah Creek. This right is to be acquired under Application No. 13426.

It appears that both protestants and applicants have customary range rights in Jakes Valley. It also appears that both parties own vested stockwatering rights from Illipah Creek, the extent and magnitude of which are undetermined. Such stockwatering rights must be protected. We are of the opinion that a permit can be granted under Application No. 13372 with the understanding that enough water must be by-passed from the reservoir for stockwatering purposes during April 1st to May 31st and from November 1st to January 1st during each year.

#### RULING

In view of the recommendations submitted in the report of the field investigation, and from the records of this office, we are herewith overruling said protest and a permit will be granted under Application No. 13372 with the following provisions:

1. Existing stockwatering and range rights in Jakes Valley must be respected.

2. Sufficient water must be allowed to go down Jakes Valley during the months of April, May, November and December of each year to take care of the watering of stock having a customary range right in the area.

Respectfully submitted,

  

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ALFRED MERRITT SMITH  
State Engineer

Dated September 14, 1950.