

IN THE MATTER OF APPLICATION NO. 13266)
IN NAME OF HERBERT N. BUHL TO APPROPRIATE :
THE WATERS OF "UNNAMED CREEK" FOR IRRIGATION:)
AND DOMESTIC PURPOSES, HUMBOLDT COUNTY, :
NEVADA.)

RULING

Application No. 13266 was filed February 14, 1950 by Herbert N. Buhl to appropriate 1.0 c.f.s. of the waters of "Unnamed Creek" for the irrigation of 100 acres of land within the NW $\frac{1}{4}$ Section 9, T. 40 N., R. 38 E. The proposed point of diversion is at a point within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 4, T. 40 N., R. 38 E.

On June 14, 1950 a protest to the granting of a permit under this application was filed by Lyle L. Frey. The grounds of said protest were as follows:

"I am the owner of lands irrigated from Tony Creek in Humboldt County, Nevada, and that the water applied for under Application No. 13266 is a part of the water supply of Tony Creek and if diverted by Herbert N. Buhl will materially affect and reduce the supply of water required by lands now owned and irrigated by myself from Tony Creek".

On August 30, 1950 a field investigation was made by Assistant State Engineer, Hugh A. Shamberger, Protestant Frey was present but the applicant, Herbert N. Buhl, failed to make an appearance although notice of such investigation was mailed August 22, 1950.

The source of water applied for originates in a small drainage area on the westerly slope of the Santa Rosa Mountain Range, near its southerly end. There is a well defined channel at the base of the mountain slope and this channel can be followed in a south-westerly direction, crossing U. S. Highway No. 95 about 4 miles southerly from where the Denio road takes off, then continuing in such direction about 1/2 mile where it intersects another channel which runs in a northwesterly direction and which is without question the upper reaches of Tony Creek. From U. S. 95 up to the base of the mountain, which is about where the proposed point of diversion is, is about 1.9 miles.

The runoff of water from the westerly slope of the Santa Rosa Mountain range and from the easterly slope of a small extension of the Santa Rosa Range, sometimes referred to as "Bloody Run" and which lies westerly of the highway, all flows into Tony Creek. Perhaps the first main tributary of Tony Creek is the "Unnamed Creek" applied for by Mr. Buhl. The major tributaries of Tony Creek are Chimney Creek and Porcupine Creek which join and confluence with

Tony Creek near the center of Section 2, T. 40 N., R. 37 E. and being about three miles downstream from where the so-called "Unnamed Creek" confluences with Tony Creek.

Tony Creek continues in a northwesterly direction passing through Section 29, T. 41 N., R. 37 E. where it is completely used by Protestant Frey.

From information obtained, it appears that the runoff in "Unnamed Creek" usually starts about March 15th and sometimes runs as late as July. On the date of the investigation there was no water flowing in this creek nor in Tony Creek. However, during the spring months "Unnamed Creek" makes a substantial contribution of water to Tony Creek.

Our records show the following water rights on Tony Creek that are appurtenant to Protestant Frey's land.

Certificate No. 1343 issued under Permit No. 2130 in the amount of 0.375 c.f.s. for the irrigation of 37.50 acres of land in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 29, T. 41 N., R. 37 E. Our records show this right in the name of Alice Maier.

Certificate No. 2636 issued under Permit No. 7339 in the amount of 0.3261 c.f.s. for the irrigation of 32.61 acres within the SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 29, T. 41 N., R. 37 E. between March 1 and September 30 of each year. This right stands on our records in the name of Alice Maire.

Permit No. 11063 to appropriate 0.3261 c.f.s. for the irrigation of 32.61 acres of land. This permit was granted to irrigate the same land that has a water right under Certificate No. 2636. The purpose of such application was to legalize the use of water between October 1st and March 1st of the following year. On June 13, 1947 Proof of Beneficial Use was filed and a certificate can be issued in the amount of 0.3261 c.f.s. between October 1st and March 1st of the following year. This permit stands in the name of Alice Maier.

Mr. Frey advised me that he purchased the Maier interests in these water rights and will file a certified copy of the transfer with this office.

Permit No. 12876 is in the name of Lyle L. Frey and is to appropriate 0.80 c.f.s. of the waters of Tony Creek for the irrigation of 80 acres within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 29, T. 41 N., R. 37 E.

In addition to the above water rights, Protestant Frey is the owner of a decreed right on the Chimney Creek tributary to Tony Creek in the amount of 29.82 acre-feet for the irrigation of 8.14 acres in Section 30, T. 41 N., R. 38 E. Decreed rights also exist on Porcupine Creek in the amount of 75.70 acre-feet for the irrigation of 21.7 acres within section 31 of the said township and range.

It is our opinion that the waters of Tony Creek are fully appropriated.

RULING

The protest to the granting of a permit under Application No. 13266 is sustained and said application is herewith denied on the grounds that:

- (1) The source applied for is a tributary to Tony Creek, and
- (2) The waters of Tony Creek are fully appropriated.

Respectfully submitted,



ALFRED MERRITT SMITH
State Engineer

September 27th, 1950