

IN THE MATTER OF APPLICATION NO. 11105
IN NAME OF FRED AND PIETRINA ETCHEGARAY
TO APPROPRIATE THE WATERS FROM AN UNDER-
GROUND SOURCE KNOWN AS "GRUB WELL" FOR
STOCKWATERING PURPOSES, EUREKA COUNTY,
NEVADA.

and

APPLICATIONS NOS. 11161 AND 11188 IN NAME
OF ANGELO C. FLORIO TO APPROPRIATE THE
WATERS OF UNDERGROUND SOURCES KNOWN AS
"MINT WELL" AND "TREASURE WELL" RESPECTIVE-
LY, FOR STOCKWATERING PURPOSES, EUREKA
COUNTY, NEVADA

RULING

and

APPLICATION NO. 13328 IN NAME OF BERNARD
DAMELE TO APPROPRIATE WATER FROM AN UNDER-
GROUND SOURCE FOR STOCKWATERING PURPOSES,
EUREKA COUNTY, NEVADA.

139
Application No. 11105 was filed April 14, 1944 by Frank
Pastorino to appropriate underground water (Grub Well) for the
watering of 500 head of cattle the year around. The proposed
point of diversion was described as being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$
Section 23, T. 20 N., R. 49 E. On June 9, 1944 a protest to the
granting of a permit under this application was filed by Angelo
C. Florio. The basis of said protest was that protestant claims
a vested right initiated prior to 1905 for stockwatering and
grazing purposes, on the area on which the proposed appropriation
of water is to be made. On January 19, 1946 Frank Pastorino
assigned Application No. 11105 together with the N $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 8;
SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 9, and NE $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 16, T. 20 N., R. 49 E.
together with range rights to Fred and Pietrina Etchegaray.

139
Application No. 11161 was filed August 25, 1944 by Angelo
C. Florio to appropriate underground water (Mint Well) for the
watering of 1000 cattle year around. The proposed point of diver-
sion is within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 25, T. 21 N., R. 49 E. Protests
to the granting of a permit under this application were filed as
follows:

Jan. 10, 1945 by Eureka Land & Stock Co.
Jan. 11, 1945 by Frank Pastorino
Feb. 9, 1945 by Peter Damele
Feb. 9, 1945 by Bernard Damele

The protest of the Eureka Land & Stock Company is based upon the
grounds that for more than 25 years said protestant has acquired a
grazing right to the lands in the vicinity of Mint Well in sufficient

number to utilize all of the feed and that the granting of said permit would interfere with protestant's lawful grazing rights.

The basis of the protest by Frank Pastorino is that said well is located within three miles of his patented lands and within three miles of a well owned by him and on which application to appropriate has been made. Further, that the range has been used by him for 18 years and that said range was never used by the Hay Ranch cattle.

The protests of Bernard Damele and Peter Damele are based on the grounds that said well is located on unreserved public lands and the use of such land for grazing by applicant will prevent, restrict and interfere with the customary use for grazing livestock by said protestants who have become established in the grazing use of such lands.

137 Application No. 11188 was filed October 21, 1944 by A. C. Florio to appropriate water from an underground source (Treasure Well) for the watering of 1000 head of cattle the year around. The proposed point of diversion is given as being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 21, T. 20 N., R. 50 E. On November 29, 1944 a protest was filed by Frank Pastorino and on January 12, 1945 an informal protest was submitted by Alma Woods. The protest of Frank Pastorino was based on the same grounds as his protest to Application No. 11161. Alma Woods' informal protest was on the grounds that she claims all prior rights to the range deeded to her by Potts Brothers and all the rights acquired by I. J. Wilson.

139 Application No. 13328 was filed March 22, 1950 by Bernard Damele to appropriate underground water by means of a well for the watering of 500 head of cattle and 50 horses the year around. The proposed point of diversion was described as being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 36, T. 21 N., R. 49 E. A protest to the granting of a permit under this application was filed June 8, 1950 by Angelo C. Florio. The basis of said protest was that the granting of said application would be contrary to the provisions of the stockwatering act of 1925 and contrary to public policy; that it would impair protestants' vested rights to graze the range surrounding the location of said well and destroy protestants' exclusive and customary grazing rights in the area and be contrary to the Nevada Livestock Grazing Act.

HEARINGS AND INVESTIGATIONS:

By registered letters a hearing was set for July 19, 1944 in connection with Application No. 11105 in name of Frank Pastorino. At the request of Wm. Kearney, Attorney for Protestant A. C. Florio, said hearing was vacated until further notice. However, a field investigation was made by Edmund Muth, Deputy State Engineer.

An informal hearing on Applications Nos. 11105, 11166, and 11188 was held in Eureka on June 22, 1950. Hugh A. Shamberger, Assistant State Engineer represented the State Engineer. It appearing that a formal hearing on these applications are necessary, the State Engineer notified the parties concerned and set same for September 29, 1950 in Eureka. On the date set for the hearing Applicant Florio advised that he had not been advised by his attorney, Wm. Kearney, re the hearing and that he was not prepared. It appeared that notice for such hearing had been sent to Applicant A. C. Florio and he had failed to notify his attorney. In view of the circumstances, the hearing was recessed.

By registered letters dated October 19, 1950 hearings on Applications Nos. 11105, 11161, 11188 and 13328 were set for November 21st and 22nd, 1950 at Eureka. On said dates the hearing was held with the following appearances:

For the State Engineer - Edmund Muth, Special Deputy
E. J. DeRicco, Field Engineer

For the Applicant and
Protestant, A. C. Florio - Robert Taylor Adams of
Kearney and Adams, Attys. at Law,
Reno, Nevada.

For Applicants & Protestants,
Fred Etchegaray, Bernard Damele,
Pete Damele and Eureka Land &
Stock Company - Orville R. Wilson, Atty. at Law,
Elko, Nevada.

Kenneth L. Mann, Atty. at Law,
Elko, Nevada.

For Protestant Alma Woods - C. E. Horton of Gray & Horton,
Attys. at Law, Ely, Nevada.

GENERAL:

This ruling involves the appropriation of ground water from four separate wells in the same general vicinity by three different parties for stockwatering purposes. The locale of the sources applied for is in the northermost portion of Monitor Valley and lying northerly from U. S. 50. Treasure Well applied for by A. C. Florio lies about three miles westerly of the base of Lone Mountain and about 5 miles northerly of the Bartine ranch on U. S. 50. Grub Well applied for by Fred Etchegaray under Application No. 11105 lies about 4 miles directly west of Treasure Well. Mint Well applied for by A. C. Florio under Application No. 11161 is located about 4½ miles northwesterly from Treasure Well and

about nine miles northerly of U. S. 50. The point of diversion of the ground water source applied for under Application No. 13328 by Bernard Damele is located about a quarter of a mile south from Mint Well. Treasure Well, Mint Well and the underground source applied for under Application 13328 are all located on or near Coils Creek.

Coils Creek, named after a former owner of the Three Bar Ranch, now owned by Bernard Damele, heads in T. 23 N., R. 49 E. several miles northerly of the Three Bar Ranch and flows southerly and southeasterly. It confluences with Roberts Creek, about three miles southeasterly from Treasure Well and crosses U. S. Highway 50 about $4\frac{1}{2}$ miles easterly from Bartine's Ranch; thence it follows the highway for about three miles where it again crosses and continues in a general easterly direction until it reaches the Hay Ranch now owned by A. C. Florio. From the Hay Ranch the water flows through Deval's Gap into Diamond Valley. Coils Creek drains the easterly slope of Simpson Park Mountains and the westerly slope of Roberts Mountains. The drainage area is rather large and as a result there is little question but what there is an abundance of ground water along the course of Coils Creek.

This ruling involves four wells. The first well was developed by Tom and Andy Pastorino in about 1934. The location of this well was described as being the same well upon which Bernard Damele filed Application No. 13328. From the testimony of Bernard Damele and Andy Pastorino, the Pastorino Brothers received permission from Damele to dig for water and graze their cattle in and around the said well. It was understood that Pastorino Brothers would not file on the water but would only use it one year. It appears from the testimony that the Pastorino Brothers recognized this area as being on Damele's range. The next wells to be dug were Grub and Treasure Wells. According to the testimony, both of these wells were developed under the Drought Relief Program in about 1935. Grub Well was filed on by Frank Pastorino under Application No. 11105 and Treasure Well was filed on by A. C. Florio under Application No. 11188. Treasure Well is a drilled well, 235 feet deep, with an artesian head. Grub Well was apparently a dug well equipped with a windmill. Mint Well under Application No. 11161 was dug by A. C. Florio subsequent to his purchase of the Hay Ranch in 1942.

RANGE OPERATIONS:

From the testimony it appears that Bernard Damele purchased the Three Bar Ranch from Leroy Coil in 1898 and continuously operated this ranch up to 1950 when he leased it to Chris Zumwalt; Fred Minoletti and Axel Harcourt. The number of cattle that were run on this range averaged from 900 to 1000 head. In addition, with several partners, he also carried on a sheep operation from about 1922 until about 1930. Mr. Damele described his southerly range boundary as lying about one mile southerly of Mint Well and being the township line between T. 20 N., and T. 21 N., and running three miles easterly and westerly of the range line between R. 49 E. and R. 50 E. This description agrees with his range map filed on

February 4, 1928. In describing his range operations in this area he stated that it is strictly a winter and spring range. In about March his cattle are turned out at the Three Bar Ranch and drift south towards what is now known as Mint Well. They work northward as the snow recedes. During this time of the year there is usually snow to water on or else there is water in Coils Creek. When they were running sheep the sheep would lamb just north of Grub's Flat and graze northward by the Santa Fe and Three Bar Ranches and northward to the Tompkins Ranch.

Maurizio Pieretti testified that in 1913 he purchased the Santa Fe Ranch which lies about five miles southwesterly from the Three Bar Ranch owned by Damele and at one time this ranch was part of the Three Bar operation. He first ran cattle and then in conjunction with Damele and others ran sheep. In 1928 he sold out to Fred Etchegaray. He testified that he ran about 275 head of cattle and that his range operation was about the same as Damele, and to some extent his cattle would run in common with the Damele cattle.

Fred Etchegaray testified that he was one of the partners with Damele and Pieretti in the sheep operation prior to his purchase of the Santa Fe Ranch from Pieretti in 1928, and that in 1945 he purchased the Grub Ranch from Frank Pastorino. According to Etchegaray, this ranch was homesteaded by Pastorino in about 1925 and that at the time of the purchase Pastorino had 185 head of cattle and that during the winter and early spring they would range in Grub and Bean Flats. Mr. Etchegaray stated that at the present time he has about 350 head of cattle.

Considerable testimony was given as to the operation of the Hay Ranch now owned by A. C. Florio, from prior to 1900 to the present time. The testimony of A. C. Florio, and others testifying on his behalf, was in considerable variance to that of the protestants of Applications Nos. 11161 and 11188. From the testimony it appears that Regli purchased the Hay Ranch from the estate of Nikals in 1898 and sold to Morrison and Cox in 1917. In 1929 Morrison sold to Bernard Damele who after a few months sold to Andy and Tom Pastorino. Later the property was owned by Andy Pastorino and sons who sold it to A. C. Florio in 1942.

It appears that Nikals ran mostly horses during his ownership of the Hay Ranch. After Regli purchased the ranch in 1898 he ran cattle and also operated a dairy to supply Eureka with milk. As near as we could determine from the testimony, he ran up to 350 head of range cattle. Prior to his sale of the ranch to Morrison and Cox he sold his cattle. From the period 1917 or 1918 to 1921 Morrison and Cox had acquired some 300 head of cattle. After Cox sold his interest to Morrison, the Morrisons turned to sheep and operated from 2000 to 4000 head. According to Pastorino, when he purchased the Hay Ranch in 1929 no cattle went with the purchase, but it included a few horses. They started purchasing some range

cattle and also some milk cows. It appears that in 1935, which was a dry year, Pastorino asked permission of Bernard Damele to allow him to develop some water in Willow Wash and run some cattle there. Permission was given and he sank a well which is now known as Windmill Well and is the one on which Damele is now applying for under Application No. 13328.

Mr. Florio testified that after purchasing the Hay Ranch in 1942 he did considerable work in developing additional hay lands and operated this ranch and the Ramona Ranch in Diamond Valley as a unit. He testified that he has been running on an average of about 900 head of cattle over the past few years, and that he changed the operations of the Hay Ranch because he had more range and had more cattle close by and that the range of the Hay Ranch and the Ramona Ranch connected.

Leon Ardans, testifying as to the operation of the Eureka Land & Stock Company, stated that they trailed their sheep and cattle southerly from Roberts Creek Ranch to Antelope and Fish Creek Valleys; that there was some drift into Willow Wash, Grub Flat and Bean Flat and that they claimed no range rights in the area under consideration. From other hearings pertaining to range rights of the Eureka Land & Stock Company in this general area, we are quite cognizant of the present day operation of this company. Since disposing of the Antelope and Fish Creek properties to Isadore Sara (now Bartholomae Corporation) their operations south of the Roberts Creek Ranch is the trailing of sheep through to Deep Hole and then southerly to their winter and early spring range. There is no question but that this company has a trail right of long standing south of the Roberts Creek Ranch and passing just westerly of Lone Mountain.

Miss Alma Woods, an informal protestant to the granting of a permit under Application No. 11188 (Treasure Well), testified that she has been engaged in the livestock (cattle) business since 1918, starting in 1919 with about 50 head of cattle and has now built up to between 500 and 600 head. She stated that until about 1943 she had between 200 and 300 head. Miss Woods owns the Willows Station Ranch; The Callo Creek Ranch; the Grimes Ranch; the Riddle Creek Ranch, and also owns 640 acres in Bean Flat obtained under the Pittman Act. She testified, and our records so show, that she also has a number of perfected water rights in Bean Flat. The range map filed by Miss Woods on February 28, 1928 indicates her northerly line as it crosses from Lander County into Eureka County is about four miles north of U. S. Highway 50. The line runs in a northeasterly direction passing about one-quarter mile north of Grubs Well (11105) and when it reaches Coils Creek turns southeasterly and running along Coils Creek past Treasure Well (11188) and then leaving Coils Creek and runs southerly, crossing U. S. Highway 50 about three miles easterly of Bartine's Ranch. State Engineer's Exhibit A shows this range line, as well as the range lines of Bernard Damele, Etchegaray and the Eureka Land & Stock Company.

Miss Woods stated in her testimony that prior to Mr. Florio's purchase of the Hay Ranch that she saw only drift of Hay Ranch cattle in Bean Flat.

FINDINGS

It appears that prior to the development of underground water from Windmill Well, Grubs Well, Treasure Well and Mint Well, the stock that grazed in the areas appurtenant to such wells depended primarily on snow water and on water flowing in Coils Creek. The exception to this is possibly Miss Woods, who has water rights southerly and westerly of these wells. It was necessary, under such conditions, to use this area as a winter and spring range insofar as there was no surface water available for summer and fall use. This practice seemed to be generally borne out from the testimony given.

It further appears from the testimony that the area in the vicinity of Treasure Well is a poor range area and would not support any great number of stock.

It is obvious that by the development of water the range could be used during the summer and fall and thereby completely alter the operations as conducted prior to 1934. The Damele operation, which extends about one mile southerly from Mint Well, according to his range map and testimony, has always been a winter and early spring range. No developed water was needed in order to utilize this range. To allow a stockwatering permit here would further complicate range operations. It would allow his cattle to range further south and would draw the cattle that normally range in Grub and Bean Flats northward.

We are of the opinion that Bernard Damele has established a customary use of the range as shown on his range map as outlined on Exhibit A, and that this was a winter and spring use. To some extent, Etchegaray, through his predecessors, has used this same range in common with Damele.

The use of the area just southerly from the Pastorino homestead, now owned by Etchegaray, for grazing purposes was increased following the drilling of Grub Well in about 1935. It is indicated from the testimony, and our knowledge of the area, that while Etchegaray has some drift southward from this well into Bean Flat, his main range is northerly towards the Santa Fe Ranch. It is our opinion that Etchegaray, through his predecessor Frank Pastorino, has acquired a customary use of limited extent northerly from this well. The extent of such use is rather difficult to determine but a reasonable estimate, based on the operation prior to 1944, the date of the Florio protest, would be in the order of 100 cattle. However, such use should be restricted to winter and spring.

We find that the operation of the Eureka Land & Stock Company in the area under consideration is a trailing operation

which has been long established. Apparently no grazing rights are claimed.

In considering Florio's applications Nos. 11188 (Treasure Well) and 11161 (Mint Well) we must base our findings on conditions prior to 1944. It appears that from prior to 1900 there has always been stock operations from the Hay Ranch. Even though the stock operation was somewhat limited, it would appear natural for Hay Ranch cattle to graze on the westerly side of Lone Mountain and northward as far as Treasure Well. We find, however, that the range in the area surrounding Mint Well under Application No. 11161 has always been considered to be the Damele range, and therefore said application should be denied. We are of the opinion that a permit could be granted under Application No. 11188 (Treasure Well) in an amount sufficient to water 150 head of cattle for the winter and spring use.

This ruling does not involve action on any application to appropriate water by Alma Woods. However, she is an informal protestant on Application No. 11188 (Treasure Well). It appears to us that while her range rights are well established and cover a major portion of Bean Flat, as well as other areas, to the south and west of Bean Flat, the approval of Application No. 11105 on Grub Well, and on Application No. 11188 on Treasure Well, would not be detrimental to her existing rights. Some drift of cattle is customary and should be recognized.

RULING

In view of our Findings the following action is taken on the applications being considered in this ruling:

Application No. 11105 (Grub Well). - The protest of A. C. Florio to the granting of a permit under this application is herewith overruled and a permit will be granted subject to all existing rights, for sufficient water to water 100 head of cattle during the winter and spring seasons.

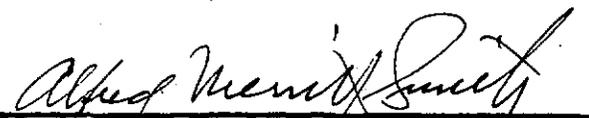
Application No. 11161 (Mint Well). - The protests to the granting of a permit are sustained and said application will be denied on the grounds that the granting of a permit would impair existing rights.

Application No. 11188 (Treasure Well). - The protests to the granting of a permit under said Application are herewith overruled and a permit will be granted subject to all existing rights for sufficient water to water 150 head of cattle during the winter and spring seasons.

Application No. 13328. - This application is herewith denied on the grounds that the customary use as established by Bernard Damele is for winter and spring use and there is usually sufficient water available to properly utilize the range.

Respectfully submitted,

April 10, 1951


State Engineer