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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

IN AND FOR IRON COUNTY, STATE OF UTAH

IN THE MATTER OF THE GENERAL)	
DETERMINATION OF THE RIGHTS TO THE)	
USE OF ALL THE WATER, BOTH SURFACE)	PRE-TRIAL ORDER
AND UNDERGROUND, WITHIN THE DRAINAGE)	
AREA OF THE BEAVER RIVER-ESCALANTE)	Civil No. 4415
VALLEY AND ALL TRIBUTARIES IN)	
MILLARD, BEAVER, IRON, WASHINGTON,)	CEDAR CITY VALLEY DIVISION
KANE, AND GARFIELD COUNTIES, IN UTAH)	

The above entitled matter came before the court for a Pre-Trial hearing on the 20th day of May, 1970 with the Honorable James P. McCune presiding. The parties were represented by counsel as follows:

- A. J. WENDELL BAYLES
Attorney at Law
800 Walker Bank Building
Salt Lake City, Utah
Representing:
T. Wendell Bayles
- B. J. HARLAN BURNS
Attorney at Law
95 North Main Street
Cedar City, Utah
Representing:
Sarah Janette Flanigan Estate
- C. SAM CLINE
Attorney at Law
Milford, Utah
Representing:
1. Mary N. & Melvin Bulloch
2. East Union Irrigation Company
- D. EDWARD W. CLYDE
Attorney at Law
351 South State Street
Salt Lake City, Utah
Representing:
Utah Construction and Mining Co.
- E. ROBERT L. GARDNER
Attorney at Law
172 North Main Street
Cedar City, Utah
Representing:
1. Theon Bauer
2. Old Fort & Old Field Reservoir Irrigation Co.
3. South and West Field Irrigation Company

- F. ORVILLE ISOM
 Attorney at Law
 56 West Harding Avenue
 Cedar City, Utah
 Representing:
 1. Wilford R. Fife
 2. David H. Jenson
 3. Alma U., Harvey U. & Zealot Millett
 4. North Field Irr. Co., East Extension Irr. Co.,
 Northwest Field Irrigation Co., Union Field
 Irrigation Co.
 5. Thos. D., Kenyon D., and Leon D. Robinson
 6. Cora J. Stucki
 7. E. Thurman Higbee
- G. H. RALPH KLEMM
 Assistant United States Attorney
 350 South Main Street
 Salt Lake City, Utah
 Representing:
 United States of America
- H. A. U. MINER
 Assistant General Solicitor
 Union Pacific Railroad Company
 10 South Main Street
 Salt Lake City, Utah
 Representing:
 Union Pacific Railroad Company
- I. CHRISTIAN RONNOW
 Attorney at Law
 Parks Office Building
 Cedar City, Utah
 Representing:
 1. J. Cressel, Jeannie H., Garth W., Eileen R., Mary D.,
 and John Sherratt
 2. Edith W. Williams
- J. The following parties in this action are not represented by counsel:
1. John Gaylen & Ellen M. Bayles
 2. Orson J. & Jerry G. Bryant
 3. Dale D. & Julia Rose DeMille
 4. Norman J. Grimshaw
 5. Vernon A. Jones
 6. York F. Jones
 7. James F. & Leatha Graff Prestwich
 8. Coal Creek Irrigation Company

I.

JURISDICTION

This is an action to determine the rights to the use of all of the water, both surface and underground, within the drainage area of the Cedar City Valley Division of the Beaver River-Escalante Valley. This action is

filed pursuant to the provisions of Chapter 4, Title 73, Utah Code Annotated, 1953, and jurisdiction of the court is not disputed and is hereby determined to be present.

II.

DECIDED ISSUES

It having been stipulated and agreed between the State Engineer and the affected parties that the Revised Determination of Water Rights shall be amended as follows:

1. The ownership on Water User's Claim Nos. 183 and 1360 is changed to Theon Bauer, Denton Bauer, and Arlen Bauer with a 1/3 interest each.

2. Water User's Claim Nos. 1538, 1539, 1540, and 1573 are amended to show that said claims are jointly owned by John Gaylen and Ellen M. Bayles.

3. T. Wendell Bayles is entitled to an additional domestic right for one family from Shurtz Creek under Water User's Claim No. 409.

4. Orson J. and Jerry G. Bryant under Water User's Claim Nos. 165, 413, 416, 420, 955, 1045, 1942, 1943, and 1958 are entitled to the water requirements for 155.5 acres from a well and from Coal Creek as set forth in the Revised Determination of Water Rights.

5. Mary N. and Melvin Bulloch under Water User's Claim Nos. 293 and 1956 are entitled to the water requirements for the irrigation of 80.00 acres of land as set forth in said claims.

6. Dale and Jula Rose DeMille under Water User's Claim No. 1032 are limited to the irrigation requirements of 175 acres of land as described in said claim.

7. East Union Irrigation Company is entitled to the irrigation requirements of 122.5 acres of land as described in Water User's Claim No. 149 and the irrigation requirements of 407.55 acres of land as described in Water User's Claim Nos. 146, 148, 338, 895, 896, 897 and 898.

8. The right of David H. Jenson for irrigation purposes under Water User's Claim No. 350 is allowed for the irrigation requirements for a total of 31.1 acres of land as described in said claim.

9. Water User's Claim Nos. 58, 59, and 231 are amended to change the ownership to York F. Jones and the remainder of said protest is withdrawn and accordingly is dismissed.

10. Cora J. Stucki is entitled to a stockwatering right under Water User's Claim Nos. 2144 from Cliff Spring and 2151 from Cora Spring for 2000 sheep, 6 horses and 25 cattle supplemental with Water User's Claim Nos. 766, 767, 768, 769, and 770.

11. The right of Union Pacific Railroad Company under Water User's Claim No. 424 is amended to show the priority date of September 5, 1923.

12. Utah Construction and Mining Company under Water User's Claim Nos. 1598 and 1051 is entitled to the use of a total of 1.75 c.f.s. under said claims for either ore beneficiation or for domestic purposes without any limitation between the two uses, but the total right is limited to 1.75 c.f.s. Also protestant is entitled to the use of water under Change Application a-3262 as set forth in Certificate No. 6427, said certificate having been issued since the Revised Determination of Water Rights was published.

13. Edith W. Williams is allowed a stockwatering right from Birch Spring under Water User's Claim No. 2149 for 2000 sheep, 6 horses, 50 cattle supplemental to all her other rights.

14. East Union Irrigation Company withdraws the protest which it submitted in behalf of a stockholder, Orlon Sherratt, and accordingly said protest is dismissed.

III.

CONFIRMATION OF RIGHTS NOT PROTESTED

The State Engineer has published the Revised Determination of Water Rights for Cedar City Valley Division of the above entitled general adjudication proceedings in four books, and copies of said Revised Determination having heretofore been served on those water users having water rights in said Division and a copy filed with this Court pursuant to the provisions of Section 73-4-11, Utah Code Annotated, 1953,

NOW, THEREFORE, IT IS ORDERED that the stipulations set forth above between the State Engineer and the affected parties in "Decided Issues" are hereby approved and the Revised Determination amended accordingly;

IT IS FURTHER ORDERED the Revised Determination of Water Rights for the Cedar City Valley Division as amended is approved and the individual water

rights contained in said Determination are hereby decreed to be valid existing water rights and are approved and confirmed as set forth in said Determination; those rights set forth in the "Issues to be Tried" section of this Pre-Trial Order are excepted from the foregoing approval and confirmation to the extent that they are the subject matter of an individual protest; this order is also subject to those changes in ownership and approved change applications on any rights in said Determination which have occurred since the Determination was published by the State Engineer; the court further reserves the right to correct typographical errors which may have occurred in the preparation of said Determination.

IV.

ISSUES TO BE TRIED

1. WILFORD R. FIFE

Protestant claims a right to irrigate 73 acres of land under Water User's Claim No. 260. The State Engineer contends that said claim should be limited to the water requirements of 53.2 acres of land since this is the amount of land that was being irrigated at the time of the original survey in this area. The State Engineer further contends that protestant has never irrigated in excess of 54.45 acres of land under said claim and, therefore, has not established a diligence right to the quantity of water claimed.

2. SARAH JANETTE FLANIGAN ESTATE

Protestant claims that she or her predecessors established a valid water right from Coal Creek to irrigate 15.44 acres of land. It is the contention of the State Engineer that protestant has produced no evidence of a valid water right for the irrigation of said land.

3. NORMAN J. GRIMSHAW

Protestant, as a water user in the area covered by this proceedings, objects to the general and consistent decline of the water table making it more difficult and more expensive for him to obtain his water supply. It is the contention of the State Engineer that this issue is not the proper subject matter of a general adjudication proceedings and, in any event, that protestant is not entitled to have the water table maintained at any specific level for his benefit.

4. DAVID H. JENSON

The Revised Determination of Water Rights limited protestant to the irrigation requirements of 75 acres under Water User's Claim No. 195. Protestant claims that he is entitled to irrigate 220.4 acres of land under said claim. Protestant does have the right to irrigate a total of 194.9 acres under said claim and from other sources. However, it is the contention of the State Engineer that Water User's Claim No. 195 is limited to the water requirements of 75 acres because this is the extent of the diligence right.

5. VERNON A. JONES

Protestant, as a water user in the area covered by this proceedings, objects to the general and consistent decline of the water table making it more difficult and more expensive for him to obtain his water supply. It is the contention of the State Engineer that this issue is not the proper subject matter of a general adjudication proceedings and, in any event, that protestant is not entitled to have the water table maintained at any specific level for his benefit.

6. ALMA U., HARVEY U., AND ZEALOT MILLETT

Protestants assert that they have a valid irrigation right from Squaw Cave Creek for the irrigation of 23.46 acres of land. The State Engineer admits that at one time the land in question was irrigated from this source but for many years this water has been diverted elsewhere and by-passed the property. Therefore, there has been no irrigation of this property in recent years and the State Engineer contends that any right which protestants had has been lost by abandonment and forfeiture.

7. NORTH FIELD IRRIGATION COMPANY, EAST EXTENSION IRRIGATION COMPANY, NORTHWEST FIELD IRRIGATION COMPANY, UNION FIELD IRRIGATION COMPANY

a. The Revised Determination of Water Rights awards protestants water for the irrigation of the stockholders' lands within the various irrigation companies. However, the proposed awards are limited in their flow to a rate of diversion that is set forth in the "Coal Creek Decree" and these rights are also subject to the specific classes set forth in said decree. It is the contention of the protestants that since the State Engineer has recommended a duty of water in this area of 4 acre feet per acre that the rates

of diversion provided for in the Coal Creek Decree are no longer applicable and that protestants' rights should not be limited in their rate of diversion and that the only limitation on said rights should be the duty of 4 acre feet per acre. It is the contention of the State Engineer that protestants' rights are limited as provided for in the prior decree of this court and that he is without authority to modify said prior decree. The State Engineer further contends that to abandon the rates of flow and classes of water provided for in the earlier decree would have an adverse effect on the water rights of the Coal Creek Irrigation Company.

b. Protestants also claim that South and West Field Irrigation Company does not have a valid water right as provided for in Class 4A, Water User's Claim No. 1973, of the "Coal Creek Decree" and the protestant is the owner of this water. South and West Field Irrigation Company asserts that it is the owner of said claim and has placed this water to beneficial use.

8. NORTHWEST FIELD IRRIGATION COMPANY

Protestant asserts that it has a valid right to a 1/3 interest in Water User's Claim No. 1045 in the name of the Coal Creek Irrigation Company. The State Engineer contends that the records in his office do not show protestant to have ownership of this amount of water but does agree that protestant is entitled to additional water from this source which is now reflected in Water User's Claim No. 413 in the name of Coal Creek Irrigation Company and that Claim No. 413 should be decreased .10 c.f.s. and said .10 c.f.s. added to protestant's Claim No. 534.

9. OLD FORT AND OLD FIELD RESERVOIR IRRIGATION COMPANY

Protestant asserts that the State Engineer, in defining its rights, failed to conform to certain prior decrees of this court which adjudicated the rights of protestant from this source. It is the contention of the State Engineer that while he supplied additional information to fully define protestant's water rights he did not ignore or vary the water rights awarded to protestant in the prior decrees of this court. Protestant specifically claims that it is entitled to a greater quantity of water for stockwatering purposes during the winter months than is provided for in the Proposed Determination. The State Engineer contends that the proposed stockwatering right fully incorporates protestant's historical beneficial use of water for this purpose.

10. JAMES F. AND LEATHA GRAFF PRESTWICH

The issue presented by this protest is whether water rights to Kanarra Creek should be the subject matter of this proceedings. Protestant claims that Kanarra Creek is tributary to Cedar City Valley, and therefore, should be a part of this general adjudication proceedings. Protestant is the owner of wells which would be benefited by the high water from Kanarra Creek recharging the underground. It is the contention of the State Engineer that since the rights to Kanarra Creek have already been adjudicated in the "Virgin River Decree" that he could not incorporate these rights into this proceedings, that it would be improper to adjudicate this question without all users who claim an interest in Kanarra Creek before the court.

11. THOMAS D., KENYON D., AND LEON D. ROBINSON

Protestants assert that they have established a valid irrigation right for 5.6 acres of land under Water User's Claim Nos. 2145, 2146, 2147, and 2148. It is the contention of the State Engineer that the land in question receives water by reason of natural sub-irrigation and that protestant has never diverted or otherwise placed any water to beneficial use on this property, and to award the protestant a water right would be to recognize the doctrine of riparian water rights which has been expressly rejected by the Utah Supreme Court.

12. UNITED STATES OF AMERICA

a. Protestant has submitted 17 additional water user's claims for stockwatering purposes which have been numbered from 2153 thru 2169, inclusive and the State Engineer has no objection to said claims being allowed for this purpose. Therefore said claims are accepted for stockwatering purposes as described in said claims.

b. The United States of America asserts that it has a valid water right by virtue of the withdrawal and reservation of certain lands in this area which the State Engineer has not included in the revised determination. The State Engineer denies that such a right exists but the parties agree to

withhold a determination on this question until the final matters on the entire Beaver River-Escalante Valley Adjudication are heard by the court.

13. E. THURMAN HIGBEE

Protestant asserts that he has a valid water right under Water User's Claim No. 126 for the irrigation of 117.5 acres of land and that the proposed determination of water rights incorrectly limits said claim to 102.5 acres. Protestant claims that when proof of appropriation was submitted on Change Application No. a-1827, 15 acres of land was inadvertently omitted from the irrigated acreage which was being irrigated by said claim. It is the contention of the State Engineer that Water User's Claim No. 126 is limited to the water requirements of 102.5 acres of land since this is the amount of acreage established under Certificate of Change No. a-162. The State Engineer further contends that upon submission of proof of appropriation on said change application and the issuance of a certificate, protestant's water right is, by law, limited to the amount described in the certificate.

14. J. CRESSEL SHERRATT AND JEANNIE H. SHERRATT; GARTH S. SHERRATT AND EILEEN R. SHERRATT; AND MARY D. SHERRATT AND JOHN SHERRATT

Protestants assert that they, or their predecessors, have established a valid diligence right for the irrigation of land in addition to the 94.8 acres which is presently provided for under Water User's Claim Nos. 85, 86, 261, 262, 1008, 1021 and 1986 to 1991 inclusive. It is the contention of the State Engineer that said claims are limited to the irrigation requirements of 94.8 acres of land because this is the extent of the original diligence right. The State Engineer further contends that said claims were limited to this amount by the original determination of water rights and by change applications which protestants have perfected on said claims, and protestants' claim would now result in an enlargement of this water right.

Dated this 27th day of August, 1970.

/s/ James P. McCune
DISTRICT JUDGE