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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,)	PRE-TRIAL ORDER
BOTH SURFACE AND UNDERGROUND, WITHIN THE)	
DRAINAGE AREA OF THE BEAVER RIVER-ESCALANTE)	Civil No. 4415
VALLEY AND ALL TRIBUTARIES IN MILLARD,)	
BEAVER, IRON, WASHINGTON, KANE, AND GARFIELD)	PAROWAN VALLEY DIVISION
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. TEL CHARLIER
Attorney at Law
425 South 400 East
Salt Lake City, Utah 84101
Representing:
1. Security Title Company
2. Scenic Lands, Inc.
- B. SAM CLINE
Attorney at Law
Milford, Utah 84751
Representing:
1. Clark Orton Estate
2. Leslie H. Schubert
3. Leslie H. Schubert, Jr.
4. Helen P. Snelgrove
5. Philip P. Snelgrove
- C. ROBERT L. GARDNER
Attorney at Law
172 North Main
Cedar City, Utah 84720
Representing:
Donald R. Lyman
- D. ORVILLE ISOM
Attorney at Law
56 West Harding Avenue
Cedar City, Utah 84720
Representing:
1. Parowan Valley Pumpers Association
2. Thomas D., Kenyon D., and Leon D. Robinson

- E. H. RALPH KLEMM
Assistant United States Attorney
200 U. S. Post Office and Court House
350 South Main
Salt Lake City, Utah 84101
Representing:
United States of America
- F. DURHAM MORRIS
Attorney at Law
First Security Bank Building
Cedar City, Utah 84720
Representing:
Parowan North Field Irrigation Company, Parowan South Field
Irrigation Company, Parowan West Field Irrigation
Company, and Parowan Reservoir Company
- G. CHRISTIAN RONNOW
Attorney at Law
Parks Office building
Cedar City, Utah 84720
Representing:
1. Parowan North Field Irrigation Company, Parowan South Field
Irrigation Company, Parowan West Field Irrigation
Company, and Parowan Reservoir Company
2. Sam P. Pritchard
- H. DALLIN W. JENSEN
Assistant Attorney General
442 State Capitol
Salt Lake City, Utah 84114
Representing:
1. Utah Board of Water Resources
2. Utah Board of Fish and Game
3. Utah Board of State Lands
4. State Engineer
- I. J. WENDELL BAYLES
Attorney at Law
800 Walker Bank Building
Salt Lake City, Utah 84111
Representing:
Herman E. Bayles Estate
- J. The following parties in this action are not represented by counsel:
1. Elaine S. Adams
 2. Melva Barton
 3. John Gaylen and Ellen M. Bayles
 4. Archie Benson
 5. Bonneville Investment Company
 6. Buckhorn Development Corporation
 7. Carl T. Evans
 8. Golden Sands Development Company
 9. J. E. Lister
 10. James O. Talbot
 11. Thomas A. & Rowena M. Little
 12. Burton K. Nichols
 13. Parowan City

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 Parowan Valley Division of the Beaver River-Escalante Valley. This action is filed pursuant to the provisions of Chapter 4, Title 73, U.C.A., 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 Proposed Determination of Water Rights for the Parowan Valley Division shall be amended as follows:

1. Melva Barton, under Water User's Claim No. 1479, is entitled to a stockwatering right for 100 head of cattle as described in said claim.
2. The right of Herman E. Bayles Estate under Water User's Claim Nos. 144, 146, 147, 255 and 334 is increased from 808.30 acre-feet to 940 acre-feet for the irrigation of 235 acres of land as set forth in Change Application No. a-4571.
3. The location of Water User's Claim No. 110 is corrected to show a location in Section 18, T33S, R8W, SLBM and Water User's Claim No. 111 is corrected to show a location in Section 15, T33S, R8W, SLBM. Said claims are owned by Bonneville Investment Company.
4. The right of the Clark Orton Estate under Water User's Claim Nos. 11, 12, 13, 14, 15 and 279 is increased from 82.9 acres to the water requirements for 102.9 acres as set forth in Change Application No. a-4182.
5. The Utah Board of Water Resources is the owner of certain water rights now shown in the name of individual water companies in this area and the Board joins in the claims of these companies. The Board holds title to said water rights by virtue of a contract between the Board and each of the individual companies for the construction of a water conservation project. However, said water rights are being re-purchased by the companies pursuant to the terms and conditions of these contracts. The specific rights to which the Board has title will be identified in the errata which the State Engineer will subsequently submit to the court. The companies involved in this program are the Paragonah Canal Company and Summit Irrigation Stock Company.
6. The name on Water User's Claim Nos. 139, 522, 545 and 546 is changed to John Gaylen and Ellen M. Bayles.

III.

CONFIRMATION OF RIGHTS NOT PROTESTED

The State Engineer has published the Proposed Determination of Water Rights for Parowan Valley Division of the above entitled general adjudication proceedings in three books; and copies of said Proposed 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 Proposed Determination amended accordingly;

IT IS FURTHER ORDERED the Proposed Determination of Water Rights for the Parowan 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;

IT IS FURTHER ORDERED that the protests submitted by the following parties are dismissed:

Elaine S. Adams
Buckhorn Development Company
Carl T. Evans
Golden Sands Development Company
John Gaylen and Ellen M. Bayles, except as provided for in paragraph II6 above.

IV.

ISSUES TO BE TRIED

1. HERMAN E. BAYLES ESTATE

Protestant claims that the irrigation season should be extended an additional month from October 31 to November 30. It is the protestant's contention that he is able to beneficially use the water during this additional period. The State Engineer contends that in most years no beneficial use of

water can be made during the month of November for irrigation purposes and that he has provided in the proposed determination sufficient flexibility to allow for the use of water during this month in those years when it could be beneficially used so long as this is accomplished without prejudice to other rights.

2. ARCHIE BENSON

The issue presented by the protest is whether protestant has a valid irrigation and stockwatering right from a well described in Water User's Claim No. 378. It is the contention of the State Engineer that at the present time there is no evidence of any irrigation and stockwatering use by protestant in recent years, and that any right which protestant may have had from said well has been abandoned or forfeited by failure to use this well in recent years.

3. J. E. LISTER

a. Protestant asserts that he has a valid water right to the use of certain springs which are located entirely on land owned by the United States of America. The United States claims that it has a prior right to the use of said springs for stockwatering purposes and that a private individual cannot appropriate water for use on federal land. The United States further alleges that, in any event, protestant is not using any water on federal lands.

b. Protestant asserts that the priority date on Water User's Claim Nos. 271, 272, 273, 1381, 1382, and 1414 should be 1891 instead of 1911 as is presently set forth in the Proposed Determination. It is the contention of the State Engineer that, based upon his investigation of this area, there is no evidence that protestant or his predecessors in interest had used water from the wells covered by said claims prior to 1911.

4. PAROWAN NORTH FIELD IRRIGATION COMPANY, PAROWAN SOUTH FIELD IRRIGATION COMPANY, PAROWAN WEST FIELD IRRIGATION COMPANY, AND PAROWAN RESERVOIR COMPANY

a. This protest involves Water User's Claim Nos. 802, 803, 804, 977, and 1217. Protestants assert that they are the owners of approximately 3/4 of the waters of Center Creek and that Parowan City owns the remaining 1/4 of said creek. Parowan City agrees that it is limited to approximately 1/4 of Center Creek but asserts that it has rights from springs in the Center Creek drainage basin in addition to its Center Creek right as set forth in the aforesaid

claims. Protestants claim that these springs are tributary to Center Creek and, therefore if these claims are allowed the City's rights will be enlarged and protestants' rights will be impaired. The Proposed Determination limits the city to a flow of approximately 1/4 of said creek but does allow the city additional water rights from said springs.

b. Protestants assert that the proposed stockwatering rights in the name of Security Title Company under Water User's Claim Nos. 742, 743, 1387, 462, 983, and 984 are improper and incorrect. This protest is based upon the assertion that protestant and Parowan City own all of the water supply in the Center Creek drainage basin and that the proposed stockwatering rights take water which is owned either by protestant or by the city. It is the contention of the State Engineer and Security Title Company that these parties do not own all of the water in said drainage basin and that the diligence claims of Security Title Company are valid and were properly established by diligence use.

c. The issue presented is whether the Division of State Lands has a valid stockwatering right under Water User's Claim Nos. 1385 and 1386. Protestants claim that no such right exists. The Division of State Lands asserts that it is the owner of the property on which said stockwatering right occurs and that its predecessor in interest established a valid diligence claim to this water use beginning in 1856 and the water has been used since that time substantially as set forth in said claims.

d. Protestants assert that the Division of Fish and Game does not have a valid diligence right for stockwatering under Water User's Claim No. 587. It is the contention of the Division of Fish and Game that it is the owner of the property on which said use occurs and that there has been a valid use of water on this property for stockwatering purposes since 1856 from the source covered by said claim.

e. The issue presented is whether Donald R. Lyman or his predecessors in interest established a valid diligence right as claimed under Water User's Claim Nos. 850 and 774 for stockwatering and domestic purposes from the source covered by said claims. Lyman's claim such a right was initiated in 1856 and has been in continuous use since that time. Protestants assert such a right was never established.

f. Protestants assert that Leslie H. Schubert, Leslie H. Schubert, Jr., Phillip R. Snelgrove, and Helen P. Snelgrove have not established a valid

stockwatering and irrigation right under Water User's Claim Nos. 573, 570, 569, 572, 574, 575, 563, 571 and 985. This contention is denied by these parties and they assert that there has been a continuous use of water for irrigation purposes since 1900 and for stockwatering purposes since 1856.

g. The issue is whether the United States Forest Service has established a valid diligence claim for stockwatering uses on forest land for those water user's claims set forth in said protest. The United States of America asserts that such a right was initiated in 1856 and has been in continuous use since that time. Protestants assert that such a right was never established.

h. The issue is whether the United States Bureau of Land Management has established a valid diligence claim for stockwatering uses on land owned by the Bureau of Land Management for those water user's claims set forth in said protest. The United States of America asserts that such a right was initiated in 1856 and has been in continuous use since that time. Protestants assert that such a right was never established.

i. Protestants claim that neither Burton K. Nichols nor his predecessors in interest established a valid stockwatering and domestic right under Water User's Claim Nos. 429 and 981 as set forth in the Proposed Determination of Water Rights. It is the contention of Burton K. Nichols that the use claimed began in 1856 and has continued until the present time.

It is the further contention of protestants regarding the issues raised in 4b through i, inclusive, that if it is determined that a valid diligence claim was established for any of these parties that such a claim should be limited to a quantity of water less than set forth in the Proposed Determination of Water Rights. It is the protestants' position that the number of stock shown in the Proposed Determination of Water Rights exceeds the number that historically existed on the land in question. In this regard it is the contention of each of the parties subject to this protest that their claim is based on the number of stock that was historically appurtenant to their individual lands and if any evaluation is made of the stockwatering claims in this area it must include all stockwatering rights in this basin since the stock moved about indiscriminately over this entire area beginning in 1856 when all stockwatering rights, including protestants', were initiated.

5. PAROWAN VALLEY PUMPERS ASSOCIATION

Protestant claims that the irrigation season should be extended an

additional month from October 31 to November 30. It is the protestant's contention that he is able to beneficially use the water during this additional period. The State Engineer contends that in most years no beneficial use of water can be made during the month of November for irrigation purposes and that he has provided in the proposed determination sufficient flexibility to allow for the use of water during this month in those years when it could be beneficially used so long as this is accomplished without prejudice to other rights.

6. SAM P. PRITCHARD

Protestant claims to have a valid diligence water right for irrigation and stockwatering purposes under Water User's Claim Nos. 368 and 396. It is the contention of the State Engineer that there may have been a use established under said claims at one time but whatever right protestant may have had under said claims has been lost by abandonment and forfeiture for failure to use the water from these sources for many years.

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

Protestants assert that they have established a valid irrigation right for 7.9 acres of land as set forth in Water User's Claim Nos. 1480, 1481, 1482 and 1483. It is the contention of the State Engineer that the land in question receives water by reason of natural sub-irrigation in that protestant has never diverted or otherwise placed any water to beneficial use on this property and that 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.

8. JAMES O. TALBOT

Protestant asserts that he has a valid water right for the irrigation of 15 acres of land and that he has established a stockwatering right for a number of stock over and above the amount set forth in the Proposed Determination of Water Rights. It is the contention of the State Engineer that there is no evidence that protestant or his predecessors in interest established the irrigation right claimed and the stockwatering right set forth in the Proposed Determination of Water Rights is based upon protestant's own

water user's claim and is limited to the amount set forth in said claims.

9. UNITED STATES OF AMERICA

a. Protestant claims a water right in this area by virtue of the reservation and withdrawal of certain lands. It is the contention of the State Engineer that no such right exists. However, the parties agree that an adjudication of this issue shall be deferred until the court hears the final matters in the Beaver River-Escalante Valley general adjudication proceedings.

b. Protestant is entitled to a diligence right on the spring described in Water User's Claim No. 107 which has been re-numbered Water User's Claim No. 1484.

c. Protestant has withdrawn the 13 additional Water User's Claims, Nos. 1438 to 1450, inclusive, and accordingly said claims are dismissed.

Dated this 27th day of AUGUST, 1970.

/s/ James F. McCune
DISTRICT JUDGE