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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF WAYNE, STATE OF UTAH

IN THE MATTER OF THE GENERAL)
DETERMINATION OF THE RIGHT TO) PRE-TRIAL ORDER
THE USE OF WATER, BOTH SURFACE)
& UNDERGROUND, FOR THE DRAINAGE) Boulder Subdivision
AREA OF THE COLORADO RIVER IN)
UTAH & EXCLUSIVE OF THE GREEN) Civil No. 435
RIVER AND THE VIRGIN RIVER.)

The above-entitled matter came before the Court for a Pre-Trial Hearing on the eighteenth day of September, 1974, with the Honorable Don V. Tibbs presiding. The parties were represented by counsel as follows:

- A. DALLIN W. JENSEN
Assistant Attorney General
442 State Capitol Building
Salt Lake City, Utah 84114
Representing:
 - 1. Utah State Engineer

- B. NORMAN JACKSON
Attorney at Law
151 North Main Street
Richfield, Utah 84701
Representing:
 - 1. Ivan Lyman
 - 2. Boulder Irrigation & Water Development Co.
 - 3. LeFair M. & LeRena Hall
 - 4. Dan & Vickie Coleman
 - 5. Neal & Faye H. Jepson
 - 6. McGregor & LeNora H. LeFevre
 - 7. John Droubay

- C. FERDINAND ERICKSON
Attorney at Law
Canyon Road
Monroe, Utah 84754
Representing:
 - 1. Vern Hansen
 - 2. Leland S. Haws

- D. ROBERT REES DANSIE
Attorney at Law
5085 South State Street
Murray, Utah 84107
Representing:
 - 1. Rosa Peterson

- E. TEX R. OLSEN
Olsen & Chamberlain
Attorneys at Law
76 South Main Street
Richfield, Utah 84701

Representing:

1. Clyde King Estate
2. Richard V. Griffin
3. Max Behunin
4. Dale E. Clarkson
5. Boulder King Ranches, Inc.
6. Redwing Ranch

F. The following parties in this action are not represented by counsel:

1. Don E. Taylor & Afton B. Taylor
2. Franklin C. Hansen

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 Boulder Subdivision of the Escalante River Division of the Colorado River. This action is filed pursuant to the provisions of Chapter 4, Title 73, Utah Code Annotated 1953, as amended, and jurisdiction of the Court is not disputed and is hereby determined to be present.

II
PROTESTS WITHDRAWN AND DISMISSED

1. LEFAIR M. HALL, by and through his counsel of record, has withdrawn and dismissed his objection to the Proposed Determination of Water Rights as of the 23rd day of March, 1972.

2. Upon the motion of the State Engineer, the Protest of DON E. TAYLOR & AFTON B. TAYLOR is hereby dismissed, since said Protestants, after proper notice, failed to appear at the Pre-Trial Hearing on this matter.

3. At the Pre-Trial Hearing, FRANKLIN C. HANSEN was directed to advise the State Engineer within twenty days of the Pre-Trial Hearing if he desired to pursue the Protest which he had heretofore filed against the Proposed Determination of Water Rights. It appearing to the Court that no further action having been taken by said Protestant, the Protest of FRANKLIN C. HANSEN is hereby dismissed.

4. VERN HANSEN, LELAND S. HAWS AND ROSA PETERSON have withdrawn their Protest with the understanding and upon the condition

that the duty of water on their lands will be increased from three to four acre feet per acre of land.

III
CONFIRMATION OF RIGHTS NOT PROTESTED

The State Engineer has published the Proposed Determination of Water Rights for the Boulder Subdivision of the Escalante River Division of the above-entitled general adjudication proceedings, and copies of said Proposed Determination of Water Rights have heretofore been served on those water users having water rights in said Subdivision and a copy filed with this Court pursuant to the provisions of Section 73-4-11, Utah Code Annotated 1953, as amended.

NOW, THEREFORE, IT IS ORDERED that the Proposed Determination of Water Rights for the Boulder Subdivision of the Escalante River Division 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. Provided, however, the claims which are included in said Proposed Determination for the United States of America or any agencies thereof are listed for information purposes only, since the United States has not been made a party to this action.

IV
ISSUES TO BE TRIED

1. The duty of water which the State Engineer has recommended

that the Court establish in this area is four acre feet per acre of land on an interlocutory basis. The State Engineer asserts that this recommended duty of water is sufficient to meet the beneficial requirements of Protestants' irrigated acreage and that any use of water in excess of this proposed duty of water would be wasteful. The below-listed Protestants assert that because of the nature of the soils and the climatic conditions in this area the proposed duty of water is not sufficient to mature their crops and that they can beneficially use water in excess of four acre feet per acre during the irrigation season.

The Protestants identified below further assert that since certain prior decrees of this Court fixed a rate at which the irrigators may divert water from this river system, the Court's prior action now forecloses the State Engineer from proposing a duty in acre feet and further forecloses this Court from setting a duty in acre feet. The State Engineer asserts that while it is true these prior decrees did set a rate of diversion for certain users, this was not an attempt by the Court to fix the individual water user's rights in terms of beneficial use. The State Engineer asserts that the right of the individual water user is not only limited to the amount of water which can be diverted, but is also limited to the beneficial requirements of the land upon which the water is applied and this is the purpose of now fixing an acre foot duty of water.

Protestants challenging the duty recommended by the State Engineer are:

1. Max Behunin
2. Boulder Irrigation & Water Development Co.
3. LeFair M. & LaRena Hall
4. Dan V. & Vickie Coleman
5. Neal & Faye H. Jepson
6. McGregor & Lenora H. LeFevre
7. John Droubay
8. Clyde King Estate
9. Dale E. Clarkson
10. Boulder King Ranches, Inc.
11. Redwing Ranch

2. IVAN LYMAN

- a. Protestant asserts that he has irrigated 9.93 acres

in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and 14.23 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, both of Section 7, Township 34 South, Range 5 East, SLB&M, which were omitted from the Proposed Determination of Water Rights. The State Engineer admits that the Proposed Determination of Water Rights should be amended to include this additional acreage. The State Engineer alleges that at the time the Proposed Determination was prepared the information available to the State Engineer indicated that Protestant did not own this additional acreage. Since that time, the State Engineer has received evidence that the Protestant is the owner of this land.

b. Protestant asserts that the State Engineer improperly omitted and deducted from Protestant's irrigation right under Water User's Claims Nos. 97-22 and 97-147 8.40 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and 9.53 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, both in Section 12, Township 34 South, Range 4 East, SLB&M, under Certificates of Appropriation Nos. 7983, 7984 and 7985. The State Engineer admits that the Proposed Determination limits Protestant to less irrigation than shown in the above-numbered Certificates of Appropriation and alleges that the survey by the State Engineer shows that Protestant is irrigating and making beneficial use of water on a total of only 32.60 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and 26.6 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 12.

c. Protestant asserts that he has a valid right to irrigate an additional 3.80 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and 1.74 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, both in Section 11, Township 33 South, Range 4 East, SLB&M, under Water User's Claim No. 97-148. The State Engineer admits that the Proposed Determination of Water Rights and Water User's Claim No. 97-148 limit Protestant to less irrigation in the above forties than is shown in Protestant's Certificates of Appropriation, but alleges that the survey by the State Engineer shows that Protestant is not irrigating this additional acreage but is only irrigating and making beneficial use of water on acreage set forth in the Proposed Determination of Water Rights under Water User's Claim No. 97-148.

d. Protestant asserts that the Proposed Determination omits a valid irrigation right for Protestant on 3.80 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and 4.0 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, Township 34 South, Range 4 East, SLB&M. The State Engineer denies that the land in question is irrigated, and further alleges that said land is not owned or controlled by Protestant.

e. Protestant claims that 4.51 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$, 3.67 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, and 2.88 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$, all in Section 11, Township 33 South, Range 4 East, SLB&M, which are included in Certificates of Appropriation Nos. 7983, 7984, and 7985, and 5.45 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, Township 33 South, Range 4 East, SLB&M, and which the Protestant has irrigated for many years, have been improperly omitted from Protestant's rights under Water User's Claims Nos. 97-20, 97-144, and 97-148. The State Engineer admits that the above claimed acreage was omitted from said rights of the Protestant, but alleges that with the exception of an additional .3 of an acre in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 11 which Protestant should be awarded, the acreage omitted is not owned or controlled by Protestant and Protestant does not have a valid right for the irrigation of said land.

Dated this 13th day of February, 1975.

/s/ Don v. Tibbs
DON V. TIBBS, DISTRICT JUDGE