

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