

IN THE MATTER OF APPLICATIONS 11606, 11607, )  
 11610, 11625, 11626, 11660, 11668 and )  
 11669 FILED BY FLOYD R. AND CARLTON P. : RULING OF THE  
 LAMB TO APPROPRIATE CERTAIN SOURCES OF :  
 WATER FOR STOCKWATERING AND WHICH WERE ) STATE ENGINEER.  
 PROTESTED BY FALLINI BROS. AND CONSTANT )  
 VENNEN. )

Application 11606 was filed by Floyd R. and Carlton P. Lamb on June 12, 1946 for the waters of an unnamed drainage through the Sandown Reservoir located in the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Sec. 36, T. 5 S., R. 51 E., M.D.B.&M., unsurveyed. The water impounded in the reservoir is to be used for stockwatering. This application was protested on November 22, 1946.

Application 11607 was filed by Floyd R. and Carlton P. Lamb on June 12, 1946 for the waters of Shirley Spring located in the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Sec. 16, T. 6 S., R. 52 E., M.D.B.&M., unsurveyed. The water is to be used for stockwatering. This application was protested November 22, 1946.

Application 11610 was filed by Floyd R. and Carlton P. Lamb on June 12, 1946 for the waters of Live Oak Spring located in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Sec. 7, T. 8 S., R. 51 $\frac{1}{2}$  E., M.D.B.&M., unsurveyed. The water is to be used for stockwatering. This application was protested November 12, 1946.

Application 11625 was filed by Floyd R. and Carlton P. Lamb on July 1, 1946 for the waters of Black Rock Spring located in the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Sec. 22, T. 7 S., R. 51 E., M.D.B.&M., unsurveyed. The water is to be used for stockwatering. This application was protested November 12, 1946.

Application 11626 was filed by Floyd R. and Carlton P. Lamb on July 1, 1946 for the waters of an unnamed drainage through the Antelope Reservoir located in the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Sec. 29, T. 4 S., R. 51 $\frac{1}{2}$  E., M.D.B.&M., unsurveyed. The water impounded in the reservoir is to be used for stockwatering. This application was protested November 12, 1946.

Application 11660 was filed by Floyd R. and Carlton P. Lamb on August 9, 1946 for the waters of Kihibab Spring located in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Sec. 35, T. 7 S., R. 51 E., M.D.B.&M., unsurveyed. The water is to be used for stockwatering. This application was protested November 12, 1946.

Application 11668 was filed by Floyd R. and Carlton P. Lamb on August 19, 1946 for the waters of Pony Spring located in the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Sec. 26, T. 5 S., R. 52 E., M.D.B.&M., unsurveyed. The water is to be used for stockwatering. This application was protested November 22, 1946.

Application 11669 was filed by Floyd R. and Carlton F. Lamb on August 19, 1946 for the waters of an unnamed drainage through Lamb's Pond located in the NE<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub> of Sec. 24, T. 5 S., R. 51 E., N.D.B.&M., unsurveyed. The water impounded in the reservoir is to be used for stockwatering. This application was protested on November 12, 1946.

Each and every requirement of the law has been complied with and the matter is now before the State Engineer for his opinion and ruling.

On December 17, 1946, a field investigation of the area in question was made by Assistant State Engineer Hugh A. Shamberger and Deputy State Engineer Edmund Kuth. On January 17, March 27 and March 28, 1947, a hearing was held at Tonopah, Nevada.

#### GENERAL DESCRIPTION OF THE AREA

Kawich Valley is a closed basin, entirely within Nye County, Nevada, which is bounded on the east by the Belted Range, on the south by the Piute Mesa, on the west by the Kawich Range and on the north by a low rolling divide which separates it from the south end of the Reville and Railroad Valleys where they join each other near Cedar Troughs. All the water sources applied for are within this valley. The springs are located in the foot hills of the Belted Range and the Piute Mesa and the Piute Mesa and the reservoirs are located on the valley floor near flood water drainages from the Kawich range.

#### ON THE PROTEST

The counsel for protestants Fallini Bros. and Constant Vanner stressed the fact that all the proposed points of diversion and places of use set forth in the applications are within either the Las Vegas Gunnery Range or the Tonopah Bombing Range. It was the contention of counsel that the State had no jurisdiction over the waters in this area.

In the opinion of the State Engineer, the State has jurisdiction over all the waters within the boundaries of the State of Nevada. (Sec. 1 & Sec. 2, Chap. 140, Statutes of 1913). The transfer of jurisdiction over a portion of the public domain from the Interior Department to the War Department would not, in itself, set aside the fundamental laws relating to the appropriation of water.

Since an Act of July 26, 1866 up to and including the Taylor Grazing Act of June 28, 1934, as amended, the Congress of the United States has repeatedly recognized the rights of the States to control the appropriation and use of waters within their boundaries. All acts of Congress dealing with the jurisdiction over public lands contain provisions expressly

recognizing the application of State laws with respect to the use of water.

The Supreme Court of the United States has affirmed the rights of the States to control the waters within their boundaries. (295 U. S. 142)

It is therefore the opinion of the State Engineer that any protest based upon a lack of jurisdiction by the State to control the appropriation and use of waters upon the public domain must be overruled.

All other matters set forth in the protest concern unappropriated water, and claimed existing water right and range rights.

Fallini Bros. and Constant Venner claim certain water and range rights through their own use prior to the purchase of the United Cattle and Packing Company holdings and in addition they claim rights as successor in interest to the United Cattle & Packing Company.

#### WATER RIGHTS

The record before the State Engineer indicates that the nearest recorded existing water right of the protestants is from Cedar Spring and Summer Spring through the so-called Cedar Pipe Line. This right is some 13 miles north of the proposed "Antelope Reservoir" application 11626. Application 11626 is the most northerly of the Lamb filings.

The protestants claim a vested right to the use of the waters of Camp's Well, located some nine miles north of application 11626. No evidence was presented to establish either the magnitude or validity of this right.

It is very evident that the granting of permits under the Lamb applications could in no way affect or impair any valid existing water right of the protestants Fallini Bros. and Constant Venner.

#### RANGE RIGHTS

Since all stockwatering rights have value dependent entirely upon the use of the surrounding public domain for the grazing of stock (1925 Stockwatering Act), the State Engineer considers range use in acting upon applications to appropriate water for stockwatering purposes.

The State Engineer finds that the area in which the Lamb applications are located, is a portion of the range claimed originally by the Kawich Cattle Company and now claimed by

A. M. Johnson, et al, and never was a portion of the protestants range. The rights of the protestants in this area seem to be limited to the normal drift of cattle from one grazing area to another.

#### LAMB APPLICATIONS

The Lamb applications cover two types of water source. Those filings called "springs" cover water sources where the water is seeping from the ground, those filings called "reservoirs" cover water which collects and flows in normally dry water courses during storm periods.

The beneficial use of both types is dependent upon proper development so that they will be available to stock. There is no evidence that the water applied for has ever been previously used or appropriated by the protestants, Fallini Bros. and Constant Venner.

#### OPINION

It is the opinion of the State Engineer that there is unappropriated water at the sources applied for. It is also the opinion of the State Engineer that no valid existing water right of the protestants will be impaired by the granting of permits under the Lamb applications.

#### RULING

It is the order of the State Engineer that the protests of Fallini Brothers and Constant Venner are overruled and that permits will be granted under applications 11606, 11607, 11610, 11625, 11626, 11660 and 11668 and 11669 upon receipt of the fee required by statute for issuing permits.

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ALFRED MERRITT SMITH  
State Engineer

Dated this 8th day of August, 1947.