

IN THE MATTER OF APPLICATION NO. 25792,)
FILED BY THE STATE OF NEVADA, DEPARTMENT)
OF FISH AND GAME, TO APPROPRIATE THE WATERS))
OF THE EAST WALKER RIVER, THE WEST WALKER)
RIVER, THE WALKER RIVER, AND TRIBUTARIES)
THERE TO FOR FISH, GAME AND RECREATION)
PURPOSES.)

R U L I N G

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Application No. 25792 was filed on September 17, 1970, by the State of Nevada, Department of Fish and Game, to appropriate 8,000 c.f.s. of water from the East Walker, West Walker Rivers, Walker River and Tributaries for Fish, Game and Recreation purposes. The proposed point of diversion is stated to be within the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 16, T.11N., R.29E., M.D.B.&M., (unsurveyed). The proposed place of use includes portions of T.11N.,R.29E.; T.10N.,R.29E.; T.10N.,R.30E.; T.9N.,R.29E.; T.9N.,R.30E.; T.8N.,R.29E.; and T.8N.,R.30E., M.D.B.&M.

The purpose of the application, as stated under Item 12, Remarks, is to support a more stable lake level and to maintain the quality of the water in the lake.

In addition, the application states use will be in Walker Lake, and conveyance will be in natural channels.

Application 25792 was protested by the Walker River Irrigation District on February 9, 1971, on the following grounds: "This application to acquire the rights to an unspecified amount of water, amounting to the total unappropriated supply, is actually an attempt to legislate through the subterfuge of using forms and procedure accepted for other purposes. No works or improvements are contemplated, either in diversion, storage or application to use. Instead this is an unconcealed attempt to arrest all future development on the Walker River stream system for mining, agricultural, municipal, industrial and recreational use, or any multi-purpose combination of two or more such uses. The Walker River Irrigation District would be injured and irreparably damaged, if such permit were granted, in that we would be prevented without regard for our needs, from making new applications to further develop the water supply, or reinstate permits lost through inability to complete the proofs of use under present permits due to conditions beyond our control, such as financial or legal delays.

"Presumably, the object of the protested applications is the preservation of Walker Lake, as a recreational and fishery attraction. This goal is not attainable, either as to maintaining present lake levels or preventing the increase of salinity. The sacrifice of all future development of water upstream, for any worthy purpose, would be to no avail."

The application was also protested on February 10, 1971, by the Lyon County Commissioners, as follows: "Granting this application would adversely affect the economy of Lyon County. It would also be detrimental to future county planning as far as irrigated lands are concerned, Lyon County has good hunting and fishing at the present time. Removing water would spoil this recreation in the county."

In addition, Application 25792 was protested on February 10, 1971, by Simpson's Colony Reclamation Canal Co.; on February 11, 1971, by West Walker River Ditch Co.; on February 11, 1971, by Plymouth Ditch Co.; on February 11, 1971, by F. M. Fulstone, Inc.; on February 11, 1971, by River Simpson Ditch; on February 11, 1971, by Gage-Peterson Ditch; and on February 11, 1971, by Saroni Canal Company.

Of the latter group, only the protest of the Saroni Canal Company is quoted in full, the others being substantially similar, varying only in detail: "We, the Saroni Canal do hereby file a Protest against this, the Nevada Fish and Game Department application to State Engineer of Nevada. Whereas, the users on the Saroni Canal, have made use of their share of the flood waters of the West Walker River, since the Saroni Canal was organized and prior to Saroni Canal, the McTarnaha Ditch was taken out in 1877. This will do us great harm to producing full crops of hay, grain, potatoes, onions and grazing for livestock and possibly lower our underground supply for pumping, water for commercial and irrigation."

It should be noted that only the Saroni Canal Company protest mentions possible adverse effects to the ground water reservoir; and that only the protest of the Gage-Peterson Ditch (in the latter group) mentions possible adverse effects to recreational uses above Walker Lake.

The Walker River system is the subject of a decree in Equity, No. C-125, entered on April 14, 1936, in the United States District Court in and for the District of Nevada, in which the relative rights of the appropriators

of the waters of Walker River System were determined. Each of the protestant canal and ditch companies, and the District receive water from the system and deliver it to the users in accordance with the terms of the decree. In addition, the Walker River Irrigation District is the owner of record of several permits issued by the State Engineer of Nevada for the appropriation of the waters of the Walker River System for storage purposes and for direct diversion for irrigation purposes. Included in these are rights for storage at various sites on the system, and rights for direct diversion of flood water from both the East and West Walker Rivers.

Records indicate that since 1918 the average annual inflow to Walker Lake from the Walker River has been about 85,000 acre-feet.

The direct flow and yearly total flows vary considerably. The quantity of 8,000 c.f.s. sought to be appropriated exceeds any flow of record.

The Nevada State Legislature in 1969 amended the statutes to provide that use of water for recreational purposes is a beneficial use. If the application were granted for the amount proposed (8,000 c.f.s.) without restriction, the appropriation would effectively prevent any future development or appropriation of the waters of the Walker River and Walker Lake. The Department of Fish and Game has indicated its concurrence that this consideration, as it may affect the public interest, be taken into account as regards future appropriations of water for municipal, and industrial purposes.

RULING

The protests to Application 25792 are overruled, and a permit will be issued, subject to existing rights upon payment of the statutory permit fees. The permit will be subject to future appropriations for municipal and/or industrial purposes, and further subject to the provision that any final water right will be based on the amount of water placed to beneficial use as determined by actual measurements.

Respectfully submitted,


Roland D. Westergard
State Engineer

RDW:JCP: jw

Dated this 19th day of
April, 1972.