

IN THE MATTER OF APPLICATIONS)
11781, 13607 AND 13740 FILED)
FOR THE WATERS OF COW CREEK,)
ELKO COUNTY, NEVADA)

R U L I N G

GENERAL:

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Application 1178¹ was filed on February 18, 1947, by Harvey S. Hale to appropriate 1.6 c.f.s. of the waters of Cow Creek to be diverted within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 3, T.46N., R.65E., and to be used for the irrigation of 160 acres within Lots 2 and 3 and the S $\frac{1}{2}$ NE $\frac{1}{4}$ Section 4, T.46N., R.65E., M.D.B.&M. This application was protested on December 20, 1947, by Salmon River Canal Company Limited.

Application 13607 was filed on January 22, 1951, by Harvey S. Hale for 500 acre feet of the waters of Cow Creek to be diverted within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 18, T.46N., R.66E., and to be used for the irrigation of 280 acres of land within Lots 1, 2, 3 and 4 in the S $\frac{1}{2}$ NE $\frac{1}{4}$ Section 4, S $\frac{1}{2}$ NW $\frac{1}{4}$ Section 3, T.46N., R.65E., and the S $\frac{1}{2}$ S $\frac{1}{2}$ Section 33, T.47N., R.65E., M.D.B.&M. This application was protested on October 1, 1951, by the Salmon River Canal Company Limited.

Application 13740 was filed on June 6, 1951, by Harvey S. Hale for 400 acre feet of the waters of Cow Creek to be diverted within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 2, T.46N., R.65E., and to be used for the irrigation of 200 acres located within the S $\frac{1}{2}$ NW $\frac{1}{4}$ Section 3, Lots 1, 2, 3 and 4 in the S $\frac{1}{2}$ NE $\frac{1}{4}$ Section 4, T.46N., R.65E., and the S $\frac{1}{2}$ S $\frac{1}{2}$ Section 33, T.47N., R.65E., M.D.B.&M. This application was protested on January 11, 1954, by Salmon River Canal Company Limited.

The grounds of all three protest are that Cow Creek is a tributary of the Salmon River and that the entire waters of Cow Creek are unused or available for appropriation and that such application would deprive protestant of vested, appropriated and adjudicated rights of the said waters of Cow Creek.

The waters of Salmon River and its tributaries have been adjudicated by the State Engineer's Order of Determination as modified and affirmed by the 4th Judicial District Court of the State of Nevada in its Decree of March 3, 1923. The Order of Determination and Decree are silent on the matter of the stream system being fully appropriated and said Order and Decree are for the purpose of determining vested rights, established prior to the enactment of the Nevada Water Law. They do not and could not determine rights by application to the State Engineer in the procedure set forth in the Nevada Water Law as of the date of filing of the application.

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No claim for the waters of Cow Creek were made by the predecessors in interest of the protestant during the statutory adjudication proceedings. No mention is made of Cow Creek in the Order of Determination or Decree.

OPINION:

It is our opinion that there is unappropriated water in Cow Creek and that the granting of these applications will not tend to impair the value of existing rights or otherwise be detrimental to the public welfare.

RULING:

Protests to the granting of Applications 11781, 13607 and 13740 are herewith overruled on the grounds that their granting will not impair the value of existing rights or otherwise be detrimental to the public welfare.

Respectfully submitted,


Roland D. Westergard
State Engineer

RDW:TJS:cm

Dated this 29th day
of August, 1973.