

IN THE MATTER OF APPLICATIONS 30534,)
34444-49 INCLUSIVE, 34866, 35015 AND)
35782 FILED TO CHANGE EXISTING WATER)
RIGHTS AND TO APPROPRIATE THE PUBLIC)
WATERS IN THE BIG SMOKY VALLEY,)
LANDER COUNTY, NEVADA)

R U L I N G

INTRODUCTION

Applications 34444 through 34449 inclusive and 34866 were filed to change existing water rights appropriating water from Big Smoky Creek aka Kingston Creek, Big Smoky Valley, Lander County, Nevada.

Application 30534 was filed to appropriate water from Kingston Creek, Big Smoky Valley, Lander County, Nevada.

Applications 35015 and 35782 were filed to appropriate water from an underground source in Big Smoky Valley, Lander County, Nevada.

Judgment and Decree has been entered in the matter of the determination of the relative rights in and to the waters of Kingston Creek (also known as Big Smoky Creek) and its tributaries in Lander County, Nevada No. 3073 in the Third Judicial Court of the State of Nevada in and for the County of Lander. A copy of this Judgment and Decree is available in the office of the State Engineer.

FINDING OF FACTS

I

Application 30534 was filed on August 20, 1976 by the Kingston Hydro-Power Cooperative, Inc.; to appropriate 1.283 c.f.s. of water from Kingston Creek for hydroelectric power purposes. The proposed point of diversion is within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 35, T.16N., R.43E., M.D.B. & M. The proposed place of use is described as within portions of Section 35 and 36, T.16N., R.43E., and portions of Sections 29, 30 and 31, T.16N., R.44E., M.D.B. & M. The period of use is to be from January 1 to December 31 of each year. The applicant states the water diverted to generate power will be returned to the stream with no consumptive use. 1/

II

A protest to the granting of Application 30534 was filed on March 1, 1977 by Young Bros. Livestock, Inc. 2/

III

A field investigation in the matter of protested Application 30534 was held on August 3, 1977. 3/

IV

A hearing was held before the State Engineer on February 15, 1978 in the matter of protested Application 30534. 4/

V

Applications 34444 through 34449 inclusive were filed on October 27, 1977 by J. Chester Young to change the point of diversion of the following Proofs and Certificates as determined by the Kingston Creek Decree and the following Permits issued by the State Engineer. The proposed point of diversion is common to all of the above subject applications and is described as within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 35, T.16N., R.43E., M.D.B. & M. 5/

Application 34444 to change the point of diversion of 1.74 c.f.s. not to exceed 347.24 acre-feet of water from Big Smoky (Kingston), Shoshone, Santa Fe and Frenchman Creeks for irrigation, stockwatering and domestic purposes under Certificate 366 issued to Proofs 02410, 02411, 02412 and 02416. The date of priority of Proof 02410 is 1870 and the date of priority of Proofs 02411, 02412 and 02416 is 1874. The applicant states that Kingston Creek is estimated to supply 85% of the water appropriated under Certificate 366.

Application 34445 to change the point of diversion of 2.63 c.f.s. not to exceed 525.96 acre-feet of water from Big Smoky (Kingston), Sheep, Rock Creeks and Gilman Springs for irrigation, stockwatering and domestic purposes under Certificate 367 issued to Proofs 01527, 02413, 02414 and 02415. The date of priority of Proofs 01527, 02413, 02414 and 02415 is 1882. The applicant states that Kingston Creek is estimated to supply 85% of the water appropriated under Certificate 367.

Application 34446 to change the point of diversion of 6.0 c.f.s. not to exceed 1,048.12 acre-feet of flood water from Big Smoky (Kingston) Creek for irrigation purposes under Permit 23503, Certificate 8294. The date of priority of Permit 23503, Certificate 8294 is November 17, 1966.

Application 34447 to change the point of diversion of 1.0 c.f.s. not to exceed 700.12 acre-feet of water from Kingston Creek for irrigation and domestic purposes under Permit 25779, Certificate 8295. The date of priority of Permit 25779, Certificate 8295 is August 26, 1970.

Application 34448 to change the point of diversion of 2.1 c.f.s. not to exceed 515.4 acre-feet of water from Kingston Creek (aka Big Smoky Creek) for irrigation and domestic purposes under Permit 26284, Certificate 8878. The date of priority of Permit 26284, Certificate 8878 is August 31, 1971.

Application 34449 to change the point of diversion of 2.1 c.f.s. not to exceed 515.4 acre-feet of flood water from Kingston Creek for irrigation and domestic purposes under Permit 26285, Certificate 8906. The date of priority of Permit 26285, Certificate 8906 is August 31, 1971.

VI

Protests to the granting of the above subject Applications 34444 through 34449, inclusive, were filed on February 22, 1979 by Gordon C. Shelley and on February 26, 1979 by the State of Nevada Department of Fish and Game. 6/

VII

Application 34866 was filed on January 12, 1978 by the Town of Kingston to change the point of diversion, manner and place of use of Proof 02435, Certificate 369 as determined by the Kingston Creek Decree. The proposed point of diversion is described as within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 35, T.16N., R.43E., M.D.B.& M. 7/

Certificate 369 was issued for 1.4 c.f.s. not to exceed 241.8 acre-feet of water from Kingston Creek (aka Big Smoky Creek) for irrigation, stockwatering and domestic use. The date of priority of Proof 02435, Certificate 369 is 1863.

In addition to changing the point of diversion, Application 34866 proposes to change the manner and place of use from irrigation, stockwatering and domestic use to quasi-municipal use.

VIII

Protest to the granting of Application 34866 was filed on March 1, 1978 by George L. and Leona B. Wood 8/ and on March 17, 1978 by Young Bros. Livestock, Inc. 9/

IX

Application 35015 was filed on February 21, 1978 by the Town of Kingston to appropriate 5.57 c.f.s. of water from an underground source (well) for quasi-municipal purposes. The point of diversion is within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 36, T.16N., R.43E., M.D.B.& M. The well is an existing well drilled under cancelled Permit 27127. 10/

X

Protest to the granting of Application 35015 was filed on October 4, 1978 by J. Chester Young. 11/

XI

Application 35782 was filed on August 21, 1978 by the Town of Kingston to appropriate 5.57 c.f.s. of water from an underground source (well) for hydro-electric power generation. The proposed point of diversion is the same source as Application 35015 within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 36, T.16N., R.43E., M.D.B.& M. 12/

XII

Protest to the granting of Application 35782 was filed on November 6, 1978 by J. Chester Young and on December 4, 1978 by George L. and Leona B. Wood. 13/

XIII

A hearing was held before the State Engineer on June 14, 1979 in the matter of protested Applications 34444 through 34449, inclusive, filed by J. Chester Young and protested Applications 34866, 35015 and 35782 filed by the Town of Kingston. 14/

XIV

In testimony at the hearing of June 14, 1979 by and on behalf of the protestant J. Chester Young, the protest to the granting of Application 34866 was withdrawn. 15/

XV

By affidavits received in the office of the State Engineer on July 20, 1979, the applicant Town of Kingston withdrew Applications 35015 and 35782. 16/

XVI

On August 27, 1979 State Engineer William J. Newman issued a ruling in the matter of Applications 30534, 34444 through 34449 inclusive and 34866. 17/

XVII

On or about September 19, 1979, J. Chester Young filed an appeal to the State Engineer's ruling of August 27, 1979 in the Third Judicial District Court of the State of Nevada in the County of Lander. 18/

XVIII

On February 5, 1981 the Third Judicial District Court ordered the appeal of J. Chester Young vacated and the ruling of the State Engineer remanded to the State Engineer for review of the entire record including a proposed agreement between the Nevada Department of Wildlife and J. Chester Young. The court further directed that after review the State Engineer would affirm, amend or reverse in total or in part the ruling of August 27, 1979. 19/

XIX

On February 20, 1981 a stipulation was entered into by J. Chester Young and the Nevada Department of Wildlife which provides for an agreement between the parties and further provides for the withdrawal of the protests by the

Department of Wildlife to Applications 34444 through 34449 inclusive. The stipulation is made a part of this ruling by reference. 20/

XX

The State Engineer has reviewed the entire record in this matter including but not limited to the following:

1. The adjudication proceedings, Judgment and Decree in the matter of the relative rights to Kingston Creek and Tributaries.
2. The transcripts of the hearings held before the State Engineer on February 15, 1978 and June 14, 1979.
3. The stipulation entered into by the Department of Wildlife and J. Chester Young on February 20, 1981.

CONCLUSIONS

I

The State Engineer has jurisdiction of the parties and the subject matter of this action. 21/

II

The State Engineer is prohibited by law from granting a permit where:

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public welfare. 22/

III

The granting of permits under Applications to Change 34444, 34445 and 34446 would not conflict with existing rights or conflict with the orderly distribution of the waters of Kingston Creek and tributaries provided that adequate diversion control structures and measuring devices are installed.

IV

The procedure and authority for changing the place of diversion, manner or place of use of existing rights is provided for under NRS 533.345.

V

The protests to the granting of Applications 34444, 34445 and 34446 by the Department of Wildlife have been withdrawn by stipulation entered into on February 20, 1981.

VI

Applicant J. Chester Young, by letter dated December 18, 1981 23/ under the signature of agent Ross E. de Lipkau, has indicated no objection to the withdrawal of Applications 34447, 34448 and 34449.

RULING

The State Engineer's ruling of August 27, 1979 in the matter of Applications 30534, 34444 through 34449 inclusive, 34866, 35015 and 35782 is hereby amended as follows:

1. The protests to the granting of Applications 34444, 34445 and 34446 are herewith overruled on the grounds that the granting of permits under Applications 34444, 34445 and 34446 would not conflict with existing rights or the orderly distribution of the waters of Kingston Creek and tributaries.

2. Applications 34444, 34445 and 34446 are hereby granted subject to the following conditions:

a. Suitable diversion control structures and measuring devices shall be installed at the expense of the applicant at the new point of diversion under Applications 34444, 34445 and 34446.

b. No work shall begin before the plans and specifications for the diversion control structures and measuring devices have been submitted to the State Engineer for approval.

c. The applicant under Applications 34444, 34445 and 34446 shall bear the expense of maintaining the diversion control structures and measuring devices.

d. Permits under Applications 34444, 34445 and 34446 are issued subject to the terms and conditions of the Kingston Creek Judgment and Decree.

3. The record of the State Engineer's office shall reflect the withdrawal of Applications 34447, 34448 and 34449 by the applicant.

Respectfully submitted,



Peter G. Morros
State Engineer

PGM/dh

Dated this 27th day

of JANUARY 1982.

FOOTNOTES

1. Public record available in the office of the State Engineer.
2. Public record available in the office of the State Engineer.
3. Public record available in the office of the State Engineer.
4. Transcript of February 15, 1978 hearing is a public record available in the office of the State Engineer.
5. Public record available in the office of the State Engineer.
6. Public record available in the office of the State Engineer.
7. Public record available in the office of the State Engineer.
8. Public record available in the office of the State Engineer.
9. Public record available in the office of the State Engineer.
10. Public record available in the office of the State Engineer.
11. Public record available in the office of the State Engineer.
12. Public record available in the office of the State Engineer.
13. Public record available in the office of the State Engineer.
14. Transcript of June 14, 1979 hearing is a public record available in the office of the State Engineer
15. Transcript of June 14, 1979 hearing is a public record available in the office of the State Engineer.
16. Public record available in the office of the State Engineer.
17. Public record available in the office of the State Engineer.
18. Public record available in the office of the State Engineer.
19. Public record available in the office of the State Engineer.
20. Public record available in the office of the State Engineer.
21. NRS 533.025 and NRS 533.030 Section 1.
22. NRS 533.370 Section 4.
23. Public record available in the office of the State Engineer.