

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 39529)
FILED TO CHANGE THE PLACE OF USE OF)
THE WATERS OF JOHNSON CREEK)
HERETOFORE APPROPRIATED UNDER)
PERMIT 28389 IN CLOVER VALLEY, ELKO)
COUNTY, NEVADA.)

RULING

GENERAL

I.

Application 39529 was filed on November 5, 1979, by Vernon and Joan Westwood (now Connecticut General Life Insurance Co.) to change the place of use of 3.0 c.f.s. of water from Johnson Creek heretofore appropriated under Permit 28389 for irrigation purposes on 640 acres of land. The proposed place of use is within the W1/2 Section 11 and the W1/2 Section 2, T.34N., R.62E., M.D.B.&M. The existing place of use is within Section 2, T.34N., R.62E., M.D.B.&M. The point of diversion is described as being within the NE1/4 SE1/4 Section 3, T.34N., R.62E., M.D.B.&M.¹

II.

Application 39529 was timely protested on May 19, 1980, by Loyd Sorenson on the following grounds:¹

"That all of the waters of Johnson Creek are presently claimed through vested rights. The granting of application to appropriate additional waters would disrupt and interfere with these vested rights."

III.

Application 39529 was timely protested on May 28, 1980, by Rose Goodwin on the following grounds:¹

1. Protestant holds, uses and claims vested water rights for the waters of Johnson Creek.
2. Protestant applies her water rights to beneficial use for domestic, irrigation, pasture and stockwater uses in connection with her livestock business. Such water rights are appurtenant to her ranch lands.
3. Protestant believes the granting of the application will adversely affect, impair and interfere with Protestant's water rights and its use; and damage Protestant by increasing the cost of applying water to beneficial use and depriving Protestant of water.

¹ Public record in the office of the State Engineer.

4. All of the waters of Johnson Creek are claimed through vested rights and there are no unappropriated waters in Johnson Creek.
5. The season of use (1-1 and 12-31) applied for exceeds the growing season and therefore, exceeds the amount of water required for irrigation.
6. The use applied for exceeds the use of the water which can be reasonably and economically used as limited by NRS 533.060.
7. Protestant reserves the right to assert any and all other basis for protest at the hearing of this application.
8. There is insufficient annual water run-off in Johnson Creek to satisfy the vested rights each year.
9. When the Applicants applied for water rights June 10, 1974 under Applications 28389, 28390 and 28393, these Applicants made a written Agreement dated August 16, 1974, that all waters of Johnson Creek, Unnamed Creek No. 3 (also may be known as Wood Creek or Chase Creek) were appropriated at that time by vested rights and further agreed they were not then claiming, and would not in the future claim any rights to waters from the above creeks, except such waters which actually run off on to Applicant's property, it being understood that vested rights existed for others to beneficially use all of the waters of said creeks and they had no responsibility to allow run off onto the Westwood property. Protestant is a third party beneficiary of such agreement and has an agreement with Loyd Sorensen dividing the flow and use of all waters in Johnson Creek between the Goodwin and Sorensen ranches."

FINDINGS OF FACT

I.

NRS 533.040 states in part "that if for any reason it should at any time become impracticable to use water beneficially or economically at the place to which it is appurtenant, the right may be severed from such place of use and simultaneously transferred and become appurtenant to another place of use in the manner prescribed in this chapter and not otherwise".

II.

NRS 533.325 prescribes the procedure for accomplishing such a change and the applicant has complied with those requirements.

III.

A permit was granted under Application 28389 under ruling issued by the State Engineer on February 6, 1985. The State Engineer finds that the grounds of the protests are without merit.²

IV.

The State Engineer is in the process of making a determination of the limit and extent of the vested rights on Johnson Creek and all streams in Clover Valley under a petition to adjudicate the system.³

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.⁴

II.

The State Engineer is prohibited by law from granting a permit under an application to change the public waters where:⁵

- A. The proposed use conflicts with existing rights, or
- B. The proposed use threatens to prove detrimental to the public interest.

III.

The State Engineer can find no evidence that the new place of use sought in the subject application will adversely effect existing rights.

IV.

The irrigation of the W1/2 Section 2 and the W1/2 Section 11, T.34N., R.62E., M.D.B.&M., is not detrimental to the public interest.

² See Ruling No. 2026 under Permit 28389, public record in the office of the State Engineer. See report of field investigation dated February 3, 1975, public record in the office of the State Engineer under Permit 28389.

³ In the Matter of the Determination of the Relative Rights in and to the Waters of Clover Valley, Elko County, Nevada, State Engineer's Order No. 805 dated November 30, 1982, granting petitions for the adjudication.

⁴ NRS Chapter 533.

⁵ NRS 533.370.

RULING

The protests to Application 39529 are hereby overruled and Application 39529 is hereby approved subject to prior existing rights and further subject to the understanding that the issuance of the permit under this application is subject to final determination in the matter of the adjudication of the waters of Clover Valley.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/RMT/bl

Dated this 29th day of
January, 1987.