

IN THE MATTER OF APPLICATION)  
10696 FILED TO APPROPRIATE )  
WATERS OF MORRIS CREEK IN )  
ESMERALDA COUNTY, NEVADA. )

R U L I N G

Application 10696 was filed on July 7, 1941 by A.F.W. Carlson to appropriate 2.0 c.f.s. from Morris Creek for irrigation and domestic purposes. The application was protested on March 25, 1942 by Charles R. Pedro, agent for Mrs. Maggie Pedro, Charles R. Pedro, Julia Chappell, Louise Davis and Frank Pedro. The protestants claimed that there was no unappropriated water in Morris Creek because the protestants had diverted all water for use on the NE $\frac{1}{4}$  SW $\frac{1}{4}$ , NW $\frac{1}{4}$  SE $\frac{1}{4}$ , S $\frac{1}{2}$  N $\frac{1}{2}$  Section 16, T. 1 S., R. 32 E., M.D.M., Mono County, California. An answer to the protest was filed on May 26, 1942 by Edwin S. Giles, Attorney in Fact for the applicant.

An investigation in the matter of this application was made on August 7, 1963 by personnel of the Division of Water Resources. At the time of the investigation, water was being used to irrigate shade trees for domestic purposes in a house and for the irrigation of a small orchard on the Pedro property.

In a letter of September 10, 1963, a request for information regarding the limit and extent of a water right recognized by the State of California on the Pedro Ranch was forwarded to the California State Water Rights Board. In a reply of September 20, 1963, the Executive Officer of this Board advised that there was no information in their files regarding the diversion of water from Morris Creek for use on the Charles Pedro Ranch in Section 16, T. 1 S., R. 32 E., M.D.B. & M. Their reply also included the following: "It is possible that this diversion and use is being made under a claim of an old appropriative right or a riparian right, neither of which is of record in this office."

A certified copy of a deed was filed in this office on December 23, 1963 to assign interest in application 10696 from A.F.W. Carlson to Nevada Farm & Development Corp. This deed was dated December 12, 1963 and was recorded in Esmeralda County, Nevada on December 13, 1963. A certified copy of an assignment was filed in this office on February 10, 1964 to assign interest

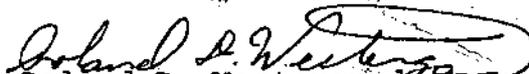
in application 10696 from A.F.W. Carlson to Charles H. Smith. This assignment was dated December 6, 1961 and was recorded in Mineral County, Nevada on April 19, 1962. The position was taken that because of the two conflicting claims involved, this matter should be settled between the parties themselves. We have received no evidence that any such action has been initiated. Either certified copies of recorded documents or original documents showing a valid chain of title are required for assignment of water rights. The deed from A.F.W. Carlson to Charles H. Smith appears to be valid and was executed and recorded prior to the deed between A.F.W. Carlson and Nevada Farm & Development Corp.

RULING

The assignment in the Division of Water Resources of interest in application 10696 from A.F.W. Carlson to Nevada Farm & Development Corp. is hereby voided and the assignment to Charles H. Smith is upheld.

The protest against Application 10696 is overruled on the grounds that the protestants have no prior right of record to appropriate waters of Morris Creek in either California or Nevada and that the limit and extent of any undetermined right that may exist has not been determined. Upon receipt of the permit fee a permit will be issued under Application 10696 to Charles H. Smith subject to existing rights should a right be established under a claim of appropriative, riparian or vested rights.

Respectfully submitted,

  
Roland D. Westergard  
Assistant State Engineer

Dated this 9th day  
of December, 1965.