

IN THE MATTER OF APPLICATION)
13608 FILED FOR THE WATERS OF)
WILLOW CREEK, ELKO COUNTY,)
NEVADA)

R U L I N G

GENERAL:

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Application 13608 was filed on January 22, 1951, by Harvey S. Hale to appropriate 200 acre feet of the waters of Willow Creek to be diverted within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 23, T.46N., R.65E., to be used for the irrigation of 280 acres located within Lots 1, 2, 3 and 4 and 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 on the grounds that Willow Creek is a tributary to the Salmon River and that the entire waters of Willow Creek have been adjudicated and no waters of Willow 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 Willow 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.

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

OPINION:

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

RULING:

Protest to the granting of Application 13608 is herewith overruled on the grounds that its granting will not impair the

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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.