

IN THE MATTER OF APPLICATION 28451)
FILED BY PERSHING DEVELOPMENT)
COMPANY TO APPROPRIATE THE WATERS)
OF ARMY CANAL IN PERSHING COUNTY,)
NEVADA.)

R U L I N G

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GENERAL:

Application 28451 was filed on June 25, 1974, by Pershing Development Company for permission to appropriate 2.7 c.f.s. of water from the Army Canal for irrigation (wildlife management) purposes. The point of diversion is within the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 12, T.25N., R.30E., M.D.B.& M. The place of use is 160 acres in the NW $\frac{1}{4}$, Section 13, T.25N., R.30E., M.D.B.& M.

Protests to the granting of Application 28451 were filed by Pershing County Water Conservation District on August 9, 1974, by Nevada Department of Fish and Game on September 4, 1974, and by Leon Anderson and John Froelich on September 9, 1974.

The protest of Pershing County Water Conservation District is based on the following grounds:

- "(a) The Army Drain, or as referred to in the application of the Pershing Development Company, the Army canal, is a private drain owned, operated and maintained by your Protestant, and therefore is not a natural point of diversion for water.
- (b) The water in the drain ditch is waste water to which no permanent right can be acquired.
- (c) The appropriation of waters from a private drain will interfere with the maintenance and upkeep of said drain and increased costs thereof and interfere with the drainage of lands".

The protest of Leon Anderson and John Froelich is essentially the same as that of Pershing County Water Conservation District.

The protest of the Nevada Department of Fish and Game stated as follows: "That water utilized in Humboldt - Toulon Wildlife Management Area for fish, wildlife and recreation purposes will be reduced. Applications now pending (Nos. 26906, 26907, and 26908) identify 31,773 acre-feet as a requirement for evaporation, but recent studies related to the proposed upstream storage project identify a need for considerably more water which has traditionally been utilized in maintaining wildlife habitat".

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A meeting concerning Application 28451 and also Applications 26906, 26907 and 26908 filed by the State of Nevada, Department of Fish and Game, was held in Lovelock on November 8, 1974.

The State of Nevada, Department of Fish and Game, is the owner of record of prior Application 26908 for the waters of the Army Drain. Application 26908 is the subject of a ruling dated January 17, 1975, approving the application for 200 c.f.s. of water, but not to exceed 21,573 ac-ft/year in conjunction with Permit 26907 for waters of the Humboldt River.

Gage readings taken on the Army Drain and on the Humboldt River at Big Five Dam indicate that in excess of 60,000 acre-feet of water flowed into the Humboldt Sink during the period January 1, 1975 to July 11, 1975. This is more than double the annual duty allowed under Permits 26907 and 26908.

RULING:

The protests to the granting of Application 28451 are herewith overruled and a permit will be issued subject to the following terms and conditions upon receipt of the permit fees.

1. The diversion shall be limited to 2.7 c.f.s. but not to exceed 480 ac-ft per year.
2. A totalizing meter shall be installed and accurate records kept of water placed to beneficial use.
3. Any runoff water shall be collected and returned to the Army Drain.
4. The permit will be issued subject to prior rights and it is understood that in some years, water may not be available at the point of diversion due to demands placed upon the system by prior appropriators.

Respectfully submitted,


Roland D. Westergard
State Engineer

RDW/BLR/jw
Dated this 23rd
day of June, 1975.