

IN THE MATTER OF APPLICATIONS)
30095 AND 30096 FILED BY MINERAL)
COUNTY FOR THE WATERS OF BODIE)
CREEK AND ROUGH CREEK, RESPECTIVELY,)
LOCATED IN MINERAL COUNTY, NEVADA.)

R U L I N G

GENERAL:

Application 30095 was filed on March 19, 1976 by Mineral County to appropriate 2500 cfs of the waters of Bodie Creek for recreational purposes. The Point of Diversion is described as being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 11, T.6N., R.27E., M.D.B.&M., and the Place of Use is described as Walker Lake within portions of Townships 8, 9, 10, and 11 N., Ranges 29 and 30 E. The Period of Use is described as January 1st to December 31st of each year.

Application 30096 was filed on March 19, 1976 by Mineral County to appropriate 2300 cfs of the waters of Rough Creek for recreational purposes. The Point of Diversion is described as being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 11, T.6N., R.27E., M.D.B.&M., and the Place of Use is described as Walker Lake within portions of Townships 8, 9, 10, and 11N., Ranges 29 and 30 E. The Period of Use is described as January 1st to December 31st of each year.

The applications indicate that the waters of both creeks are proposed to be utilized to assist in maintaining a fishery and recreational area at Walker Lake, Nevada.

Both applications were protested on June 15, 1976 by the Flying M Ranch and on July 14, 1976 by the Walker River Irrigation District. The protests are made a part of this Ruling by reference.

FINDINGS OF FACT:

I. The applicant, Mineral County, is a political subdivision of the State of Nevada, duly authorized by law to submit applications to appropriate the public waters of the State of Nevada.

II. After due notice to all parties by certified letter dated August 31, 1976 a hearing in the matter of Applications 30095 and 30096 and the protests thereto was held before the State Engineer on Tuesday, September 29, 1976 in the Mineral County Courtroom, Hawthorne, Nevada. Evidence, testimony, and information were presented at the hearing.

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III. The waters of Rough Creek and Bodie Creek are tributary to the Walker River System and said system is the subject of a Decree in equity No. C-125 entered on April 14, 1936 in the U. S. District Court in and for the District of Nevada in which some of the rights of the appropriation of the Walker River System were determined. In addition, the Walker River Irrigation District is the owner of record on several permits issued by the State Engineer of Nevada for the appropriation of water of the system for storage purposes and for direct diversion for irrigation purposes.

IV. In addition, Permit No. 25792 in the name of State of Nevada, Department of Fish and Game appropriates 8000 cfs of water from the terminus of the Walker River System for fish, game, and recreational purposes. The place of use under this permit is Walker Lake located in portions of Townships 8, 9, 10, and 11 North, Ranges 29 and 30 East. The point of diversion under this permit is located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 16, T.11N., R.29E., M.D.B. &M.

V. Records indicate that since 1918 the average annual flow to Walker Lake from the Walker River has been about 85,000 acre-feet. The quantity of 8000 cfs appropriated under Permit 25792 exceeds any flow of record.

CONCLUSIONS:

1. The State Engineer has jurisdiction of the parties and the matter subject of this action.
2. 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 public welfare.
3. Records indicate that at the present time there is insufficient water to satisfy existing water rights on the system.

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4. The proposed appropriation under 30095 and 30096 would tend to conflict with existing surface water rights on Rough and Bodie Creeks and tend to be detrimental to the orderly distribution of those waters under existing rights.

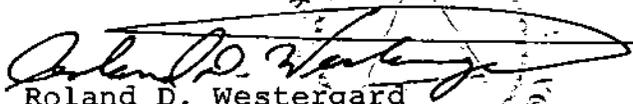
5. The proposed appropriations applied for as well as the location of described points of diversion under the Applications 30095 and 30096 would conflict with the prior rights as set forth under the Walker River Decree and appropriated rights granted to the Walker River Irrigation District and Permit 25792 in the name of the State of Nevada, Department of Fish and Game, and further tend to prove detrimental to the public welfare.

RULING:

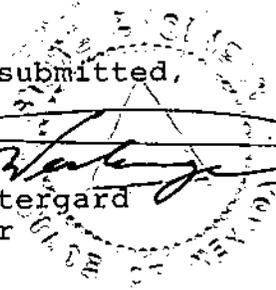
The engineering study submitted by the applicants at the hearing and identified as Applicants Exhibit #2 is accepted into evidence.

Applications 30095 and 30096 are denied on the grounds that the appropriations requested thereto would tend to impair the value of existing rights; there is no unappropriated water in the source; and to allow the proposed appropriations under these conditions would be detrimental to the public interest and welfare.

Respectfully submitted,



Roland D. Westergard
State Engineer



RDW:PGM:sk

Dated this 27th day

Of October, 1976.