

IN THE MATTER OF APPLICATION 22868)
FILED BY JACK W. BAY TO APPROPRIATE)
WATERS OF SIERRA CANYON CREEK IN)
DOUGLAS COUNTY, NEVADA)

R U L I N G

Application 22868 was filed on November 24, 1965 by Jack W. Bay to appropriate 0.12 c.f.s. from Sierra Canyon Creek for domestic & Quasi-Municipal purposes. The proposed point of diversion is within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 4, T. 13 N., R. 19 E., M.D.B.&M., and the proposed place of use is within portions of SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 4. The application was protested on March 9, 1966, by Rufus W. Adams on the grounds: "That all of the waters of Sierra Canyon Creek have been appropriated and that none of the waters of Sierra Canyon Creek is now available for appropriation. That the persons presently entitled to appropriate all of the waters of Sierra Canyon Creek are as follows, to-wit: Rufus W. Adams as to 3/10 of the said waters of Sierra Canyon Creek, and Graham Hollister as to 7/10 of the said waters of Sierra Canyon Creek." The application was also protested on March 18, 1966, by Sierra Creek Ranch, Inc. on the grounds: "That all of the water flowing in Sierra Canyon Creek is now and has been fully appropriated by diversion and applying the water to beneficial use since approximately 1858: That Protestant is now the owner of the right to use 7/10 of the flow of said Sierra Canyon Creek: That the right to use for beneficial purposes the remaining 3/10 of the waters of Sierra Canyon Creek is, Protestant has been informed, owned by R. W. Adams: That the water of Sierra Canyon Creek have been decreed by the courts of the State of Nevada, the decree of the district court being dated August 29, 1879 which decree was affirmed by the Supreme Court of the State of Nevada 17 Nevada 85; 19 Nevada 78; 18 Nevada 60: That Protestants predecessors in interest were decreed 7/10 of the flow of Canyon Creek by the decrees above referred to."

A field investigation in the matter of the application and protests was held July 12, 1966. The applicants and protestants were present and/or represented at this investigation. The investigation revealed that water is diverted from Sierra Canyon Creek at a point approximately 300 feet upstream from the proposed point of diversion under Application 22868. Water is divided between the protestants at this point and diverted into pipelines and conveyed to the vicinity of the areas where it is used. There was a small quantity of water leaking through the diversion structure at the time of the investigation. There was evidence of another point of diversion at a point approximately 100 feet downstream from the point

described under Application 22868. However, no water was being diverted at this point at the time of the investigation. The water passing the upper diversion disappeared in the creek channel a short distance below this second point. There is another point of diversion from Sierra Canyon Creek where Foothill Road crosses the stream channel. This point is also downstream from the point described in the application.

A Decree dated August 29, 1879, entered in the District Court of the Second Judicial District of the State of Nevada, County of Douglas, provides for the division of water customarily flowing in Sierra Creek. The plaintiff in the case was allowed seven tenths of said flow and the defendant was allowed three tenths of said flow. The Decree provides that each party and his agents, servants, and successors are perpetually enjoined from diverting or preventing the flow or in any manner depriving the other party of the use of his percentage of the flow. The Supreme Court of the State of Nevada in a decision dated April 1, 1885, Case #1081, affirmed the judgment of the District Court.

There may be periods of time of limited duration when there is excessive water or water in excess of that "customarily" flowing in Sierra Creek.

However, the evidence in the field, including the respective locations of points of diversion, the means of conveying the decreed water, and channel conditions below the lower point of diversion indicate that there is no unappropriated natural flow water which the applicant seeks to appropriate.

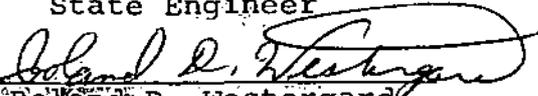
RULING

The protests of Rufus W. Adams and Sierra Creek Ranch, Inc. to Application 22868 are upheld and Application 22868 is denied on the grounds that there is no unappropriated natural flow water in the proposed source of supply.

Respectfully submitted,

GEORGE W. HENNEN
State Engineer

By:


Roland D. Westergard
Assistant State Engineer

Dated this 14th day
of July 1966.

RDW:hs