FILED
SEP 19 1975
STATE ENGINEER'S OFFICE

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 29417, FILED BY STATE OF NEVADA, DEPARTMENT OF FISH AND GAME, on _____ 19___, to APPROPRIATE THE WATERS OF the HUMBOLDT RIVER

PROTEST OF LEON ANDERSON and JOHN FROELICH

Comes now LEON ANDERSON and JOHN FROELICH whose post-office address is c/o Reed & Bowen, 290 South Arlington, P.O. Box 187, Reno, Nevada 89504 whose occupation is rancher, and protests the granting of application number _____, filed on _____, 19___ by STATE OF NEVADA, DEPARTMENT OF FISH AND GAME to appropriate the waters of the HUMBOLDT RIVER situated in Pershing County, State of Nevada, for the following reasons and on the following grounds, to wit:

See attached

WHEREFORE protestant prays that the application be denied
(Denied, or issued subject to prior rights, as the case may be)

and that the use of water herein claimed by protestant be confirmed and that an order be entered establishing said right and for such other relief as the State Engineer deems just and proper.

Bruce Bowen
Protestant.

2464

$10 FILING FEE MUST ACCOMPANY PROTEST.
PROTEST MUST BE FILED IN DUPLICATE.

BLR 9/19/75

STATE OF NEVADA
COUNTY OF WASHOE } ss.

BRUCE BOWEN, being first duly sworn, deposes and says, that he has read the foregoing protest and knows the contents thereof and that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters he believes it to be true.

Bruce Bowen
BRUCE BOWEN

Subscribed and sworn to before me this 18th day of September 19 75.

Norma C. Tiffany
Notary Public.

NORMA C. TIFFANY
Notary Public — State of Nevada
Washoe County
My Commission Expires April 25, 1977

RECEIVED
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IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NO. 29470 and APPLICATION NO. 29417 FILED BY THE STATE OF NEVADA, DEPARTMENT OF FISH AND GAME, TO APPROPRIATE UNDER APPLICATION NO. 29470, 5,000 SECOND FEET, AND UNDER APPLICATION NO. 29417, APPLICATION FOR PERMISSION TO CHANGE THE POINT OF DIVERSION OF 2,000 C.F.S. OF WATER HERETOFORE APPROPRIATED UNDER PERMIT 26907 FOR FISH, WILDLIFE AND RECREATIONAL PURPOSES IN HUMBOLDT LAKE.	Protest to Application No. 29417

REED & BOWEN
ATTORNEYS AT LAW
ARLINGTON-RIDGE BUILDING
290 SOUTH ARLINGTON AVENUE
RENO, NEVADA

COME NOW Leon Anderson and John Froelich, by and through their undersigned attorneys, whose post office address is c/o Reed & Bowen, P.O. Box 187, Reno, Nevada 89504, whose occupation is rancher, and protests the granting of Application Nos. 29470 and 29417, to appropriate the waters of the Humboldt River and to change the point of diversion of waters heretofore appropriated under Permit No. 26907 on the Humboldt River on the following grounds, to-wit:

1. The waters of the Humboldt River are fully appropriated.

(a) The said waters are subject to vested rights.

(b) Said waters are also the subject of existing certificate and permit rights obtained on application to appropriate waters made to the State Engineer of Nevada. The total amount of water

subject to vested rights and to pending adjudicated and permit rights exceeds the reasonably anticipated maximum flow of the stream.

(c) The waters of the Humboldt River are subject to the Humboldt Decree.

2. The granting of the subject applications would permit the diversion of water for which valid prior and senior rights exist.

3. Protestants are the owners and holders of both vested and application and decreed water rights which divert from the same source and said water rights will be impaired and lost if the subject applications are granted.

4. There are no waters available for appropriation from said source.

5. Upon information and belief, Application Nos. 29470 and 29417 relate all or in part to waste water and under Nevada law waste water is not subject to appropriation. In the alternative, said applications relate to return flow, said waters having become a part of the respective streams and, as set forth above, are already fully appropriated. In the event it is held that waste water can be appropriated, said waste water is also subject to existing certificates and permit rights.

6. Upon information and belief, Application Nos. 29470 and 29417 should be denied by reason of the fact that the applications set forth no known natural and physical point of diversion for the waters of the Humboldt River. The proposed point of diversion set forth in the said applications is, in fact, located on land owned by the protestants. In any event, a point of diversion could have been applied for by the applicant State

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of Nevada, Department of Fish and Game at a point downstream sufficiently far to be removed from the private property of protestants.

7. Application No. 29470 should be denied for the reason that it does not set forth and specify a place of use. The reason set forth in the said application refers to "fish, wildlife and recreational purposes", and if the said applications were to be granted, the aforesaid uses would or could result in various types of recreation by the general public taking place on and around the private property of protestants.

8. Upon information and belief, the maintenance of storage water in the Humboldt River, will interfere and jeopardize the proper drain of waters from lands of protestants and will interfere with the continued maintenance and upkeep of the said drains and will increase costs thereof.

9. Upon information and belief, the said proposed points of diversion are not natural points of diversion. Applicant does not propose to construct any ditches or other structures which would enable applicant to obtain dominion over said water and, therefore, no valid appropriation can be made.

10. Applicant does not own property in the area of the proposed points of diversion, nor does applicant have right of access to the point of diversion set forth in Application Nos. 29470 and 29417, but would be only a trespasser.

11. Applicant will pay no taxes and no water master fees which are being paid by protestants and/or other land owners and water users in the area.

12. Diversion of water from stated points of diversion would raise the water table with adverse affects on surrounding lands and would directly interfere with the value of lands of

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protestants and the value of existing water rights located thereon.

13. The ruling of the State Engineer, Division of Water Resources, dated January 17, 1975, pertaining to Applications 26906, 26907 and 26908 which were filed on August 24, 1972, contains certain restrictions pertinent to the two applications numbered 29470 and 29417 being protested herein. Presumably, that ruling still applies in full with all restrictions to Application 29417 which requests change in the point of diversion of waters heretofore appropriated under Permit 26907. In that ruling, on the fifth page, set forth, among a number of other things, is the following condition:

> "4. The permittee shall not, through the use of structures of other means, intentionally raise the water levels of the Toulon or Humboldt Lakes without consent of the Pershing County Water Conservation District."

It also sets forth a restriction, among other things, as follows:

> "1. Permittee shall file an application to move the point of diversion downstream to a point below the last existing diversion on the Humboldt River within 60 days of the date of issue of Permit 26907."

In this connection it was assumed by protestants, who originally protested Application 26907, that the point of diversion would not only be changed to a point below the last existing diversion on

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the Humboldt River, but would also be sufficiently far downstream so that it would not be on the private property of protestants. As set forth within the said previous protests and the within protest, there is no reason for a point of diversion to be on the private property of protestants, there is no access to that point and there is no means of physical diversion of water at that point. Apparently, the applicant proposes to leave the water in the main stream of the Humboldt River which was one point protested in previous Applications 26907 and 26908.

14. While Application 29417 requesting a change in the point of diversion is objected to, among other reasons, on the basis the point of diversion is not sufficiently downstream to not be on the protestants' private property, it is assumed that Application 29417 remains subject to all the terms and conditions of the basic ruling of the State Engineer, including, but not limited to, the quoted sections in Paragraph 13 above. However, there are no such limitations on Application 29470 for an additional 5,000 second feet of the public waters of the State of Nevada, which said application lists a proposed diversion point identical to that of Application 29417. If Application 29470 should be granted in the future, even if further downstream, it should be subject to every applicable restriction, requirement, exception and the like contained in the ruling of the State Engineer dated January 17, 1975, reference Applications 26906, 26907 and 26908. It is submitted that both of the current applications are strenuously protested, in addition to the other grounds set forth herein, on the basis that the point of diversion should not be on the private property of protestants.

DATED this 18th day of September, 1975.

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Bruce Bowen
REED & BOWEN
Attorneys at Law
290 South Arlington Avenue
Reno, Nevada 89501
Attorneys for Protestants
LEON ANDERSON and JOHN FROELICH

STATE OF NEVADA)
) ss
COUNTY OF WASHOE)

BRUCE BOWEN, being first duly sworn, deposes and says:

That he is an attorney in fact for the protestants named therein; that he has prepared and read the foregoing Protest and knows the contents thereof and the same is true of his own knowledge, except as to those matters stated therein on information and belief, and as to those matters, he believes them to be true.

That this Protest, on behalf of the said Leon Anderson, is made in said protestant's capacity as Administrator of the Estate of Marie Anderson, on behalf of the Estate of Marie Anderson, and on behalf of the Estate of Marie Anderson as to any partnership or other interest which the said Estate may have with John Froelich, as an individual, or with Leon Anderson, as an individual.

Bruce Bowen
BRUCE BOWEN

SUBSCRIBED AND SWORN TO before me this 18th day of September, 1975.

Norma C. Tiffany
Notary Public

NORMA C. TIFFANY
Notary Public — State of Nevada
Washoe County
My Commission Expires April 25, 1977

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