

IN THE MATTER OF APPLICATION NO. 13877)
FILED BY C. C. PERRIN AND SONS TO :
APPROPRIATE THE WATERS OF BURKE CHANNEL AND : RULING
TRIBUTARIES, LYON COUNTY, NEVADA.)

Application No. 13877 was filed on October 18, 1951 by C. C. Perrin and Sons to appropriate 4.0 c.f.s. of water from Burke Channel and its Tributaries for irrigation and domestic purposes. The point of diversion is located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, T. 12 N., R. 23 E., M.D.B.&M., and the place of use is 400 acres of land in portions of Sections 25 and 26, T. 12 N., R. 23 E., M.D.B.&M. The period of use is from October 15 to April 15 of each year.

Protests to the granting of a permit under this application were filed as follows:

On December 7, 1951 by William J. and Alice F. Jaschke on grounds that the applicant cannot make beneficial use of the waters they are attempting to appropriate during the period of time for which they seek to appropriate the same and that the entire flow of Burke Channel for said period of time has previously been put to beneficial use by the protestants, and their predecessors in interest, and they therefore have a prior right to said waters.

On January 5, 1952 by the Honker Gun Club on grounds that said water is waste water and not subject to appropriation.

On December 26, 1951 by William and Joice Toner on grounds identical to those described under the protest of William J. and Alice F. Jaschke, and in addition on grounds that if a permit is granted to the applicant there would be no water available for stock grazing on the Federal Range and adjoining the area.

On January 11, 1952 by Charles Roberts and L. E. Tripp on grounds similar to those described under the protest of William J. and Alice F. Jaschke. This protest was received too late for filing, the last day for filing protests under Application No. 13877 being on January 6, 1953.

On April 3, 1950 a ruling was issued by this office in the matter of Application No. 11918 filed by C. C. Perrin to appropriate the waters of Burke Channel and Tributaries for irrigation purposes. The point of diversion and place of use under this application are identical to those described under Application No. 13877, with the period of use from April 15 to October 15 of each year.

In said ruling it was found that:

- (1) The waters of Burke Channel are subject to appropriation.
- (2) A permit to appropriate such water must be predicated on the presence of available water at the point of diversion and would not obligate the Improvement District in any way as to the continuance of such flow of water.
- (3) A permit to appropriate water does not carry with it any right of way privileges, and further that the purpose of the Drain must be recognized and not molested by any works of diversion.
- (4) The Protestants do not have a legal right to appropriate water from the Burke Drain.

Application No. 11918 was approved subject to the foregoing findings.

Application No. 13877 has been filed to extend the use of the waters of Burke Channel under Permit No. 11918 to include the winter months.

ISSUES:

The issues are:

- (1) Are the waters applied for public waters and subject to appropriation?
- (2) Would the granting of a permit be detrimental to existing rights and/or public interests?
- (3) Can the applicant place the water to beneficial use during the period of time for which he seeks to appropriate said water?
- (4) Would the granting of a permit under this application be detrimental to the watering of livestock on the Federal range?

From previous investigations and hearing in the matter of Application No. 11918, it was found that there are unappropriated waters in Burke Channel subject to appropriation, and that the granting of a permit under said application would not be detrimental to existing rights and/or public interests. Since the date of the investigations and hearing, no new water filings have been made on the source.

Whether the applicant can place the water to beneficial use during the period of time for which he seeks to appropriate said waters is not a question which should be determined at this time. In accordance with Section 63, Chapter 140, Statutes of 1913, it is the duty of the State Engineer to approve all applications made in

proper form which contemplate the application of water to beneficial use where the proposed use does not tend to impair the value of existing rights, or be otherwise detrimental to the public welfare. The extent of any water right is determined on the amount of water that has been beneficially used. If the applicant cannot beneficially use the water, as the protestants claim, it will not be possible for him to submit his proof of beneficial use and he will not obtain a water right under his application.

The Bureau of Land Management, Division of Range Management, has notified this office that the waters of Burke channel are not considered a stockwatering source for the servicing of the Federal range in its area. According to the Division of Grazing, Burke Channel is located on private land over which the Federal Government has no jurisdiction, and livestock grazing on the Federal Range in its vicinity do not have access to said waters.

OPINION:

It is the opinion of the State Engineer that:

- (1) The waters of Burke Channel are in water courses and are subject to appropriation providing that the value of existing rights are not impaired, and further that the purpose of Burke Channel, which serves as a drain for Improvement District No. 1, is not affected.
- (2) The granting of a permit under Application No. 13877 will not be detrimental to existing rights and/or public interests.
- (3) The watering of livestock on the Federal Range will not be affected by the action on this application.

RULING

The protests to the granting of Application No. 13877 are herewith overruled and a permit will be granted on receipt of the statutory permit fee, subject to the following provisions:

- (1) The permit shall be subject to all existing rights.
- (2) The total duty of water per acre of land irrigated shall be established.
- (3) The appropriation shall be predicated on the presence of available water at the point of diversion and will not obligate the Walker River Irrigation District or Improvement District in any way as to the continuance of such flow of water.

- (4) The permit shall not carry any right-of-way privileges, and further the purpose of Burke Channel, which serves as a drain for the Improvement District, will be recognized and not molested by any works of diversion.

Respectfully submitted,

HUGH A. SHAMBERGER
State Engineer

By

Edmund Muth

EDMUND MUTH
Assistant State Engineer

Dated this 30th day
of December, 1953.