

IN THE MATTER OF APPLICATION 23503 FILED)
BY YOUNG BROTHERS LIVESTOCK, INC., TO)
APPROPRIATE WATER FROM KINGSTON CREEK)
(AKA BIG SMOKY CREEK) IN LANDER COUNTY,)
NEVADA.

R U L I N G

Application 23503 was filed November 17, 1966, by Young Brothers Livestock, Inc., to appropriate 10.0 c.f.s. of the waters (flood waters) of Big Smoky Creek for irrigation and domestic use, to be diverted within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 15, T. 16 N., R. 44 E., M.D.B.&M. The place of use is described as being the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 23 and the W $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ Section 24, T. 16 N., R. 44 E., M.D.B.&M. The period of use to be from January 1 to December 31 of each year.

Application 23503 was protested by Harriet T. Beard on January 11, 1967 and by the Rus Foundation, Inc. on January 20, 1967, on the grounds:

1. The granting of this application would be in direct violation of the decree.
2. Granting of the application could constitute an appeal from the decree.
3. Granting the application would deny the protestant the water adjudicated to the protestant.
4. Granting the application would interfere with the creation of a public recreation area.

The application was also protested by the Nevada Fish and Game Commission on January 26, 1967 on the grounds that: "If said application would in any way affect the future storage of water for recreational purposes in the headwaters of Big Smoky Creek, the Commission has no alternative but to register a protest on this filing....."

The waters of Kingston Creek have been adjudicated, the decree being issued March 22, 1963.

A field investigation was made of protested Application 23503 on August 2, 1967.

Flow records indicate that water in excess of the total amount granted in the Kingston Creek Decree, flows in Kingston Creek.

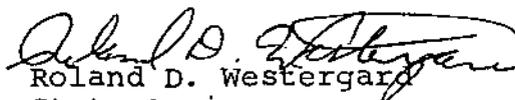
RULING

The protests to the granting of Application 23503 are herewith overruled and a permit will be issued upon receipt of the statutory permit fee, for the acreage controlled by the applicant, subject to existing rights.

On Application 23503, the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 23, the NW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 24, T. 16 N., R. 44 E., M.D.B.&M., are included in the place of use. Since the applicant does not control these lands, the permit will not include these lands. The acreage in the permit for the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 24, will be limited to 23.03 acres of harvest crop as specified in the decree.

The total acre-feet duty of water for lands to be issued a permit under Application 23503 is 4.0 acre-feet per acre.

Respectfully submitted,


Roland D. Westergard
State Engineer

RDW:SH:hs

Dated this 31st day of
July, 1968