

IN THE MATTER OF APPLICATION 30189)
TO STORE WATER IN THE WILDHORSE)
RESERVOIR, FILED BY THE ELKO COUNTY)
FAIR AND RECREATION BOARD, ELKO)
COUNTY, NEVADA)

R U L I N G

37

INTRODUCTION

Application 30189 was filed on April 23, 1976 to store 72,000 acre-feet of water in the Wildhorse Reservoir, Elko County, Nevada.

FINDINGS OF FACT

I

Application 30189 was filed on April 23, 1976 by the Elko County Fair and Recreation Board to store 72,000 acre-feet of water from the Owyhee River and Tributaries for recreational use. The point of diversion is described as within the NE1/4 NW1/4 of Section 25, T.44N., R.54E., M.D.M. Place of use is described as within Sections 17, 19, 20, 27, 28, 29, 30, 31, 32 and 33, all in T.44N., R.55E., M.D.M.; Sections 25 and 36, all within T.34N., R.54E., M.D.M.; Sections 4, 5, 6, 8, 9 and 17, all within T.43N., R.55E., M.D.M. The period of use is to be from January 1 to December 31 of each year. 1/

II

A protest to the granting of Application 30189 was filed by Ralph Scissions on August 30, 1976. The protest states that since 72,000 acre-feet is the capacity of the reservoir that is used and managed by the Duck Valley Reservation, no water remains to be appropriated by Application 30189 and that the Duck Valley Indian Tribe is entitled to use 72,000 acre-feet for irrigation of Duck Valley lands under the Winters Doctrine.

In addition, the protest claims that written permission must be obtained from the owner of the reservoir to any application for recreation use and such permission has not been given by the United States Government. 2/

III

A hearing was held in Elko, Nevada on August 20, 1979 in the matter of the protest to Application 30189. 3/

IV

Testimony presented by the protestant, Ralph Scissions, claimed the State Engineer does not have authority to grant a storage right to the waters impounded by the Wildhorse Dam. The protestant claimed that water was reserved for the benefit of the Shoshone-Paiute Tribe under the Winters Doctrine for irrigation use on the Duck Valley Reservation. The protestant also contended that the Elko Fair and Recreation Board are not defined as an appropriate party to make an application for a water right.

Mr. Scissions also claimed that under the provisions of Nevada Revised Statute 533.440 subsection 2, that an agreement is required with the owner of the reservoir for the purpose set forth in the application.

V

Testimony presented by the applicant, Elko County Fair and Recreation Board, claimed the use by fishermen and others to be of great economic and recreational benefit to Elko County residents and non-residents. In addition, witnesses testified that the State of Nevada had recently purchased 120 acres of private land adjacent to the reservoir to provide access to the water and to develop recreational facilities.

Further testimony by the Elko County Fair and Recreation Board claimed the Wildhorse Reservoir to be the prime recreation area in Elko County since the use of the Ruby Marshes has been severely restricted by the Federal Government.

CONCLUSIONS

I

The State Engineer has jurisdiction of the parties and the subject matter of this action. 4/

II

The State Engineer is prohibited by statute 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 the public welfare. 5/

III

The Elko County Fair and Recreation Board is a political subdivision qualified to make application to appropriate the public waters for a beneficial use. 6/

IV

Recreation use is recognized by Nevada statutes as a beneficial use of water. 7/

V

The granting of a permit to Application 30189 would not be adverse to the use of the water stored in the Wildhorse Reservoir for irrigation purposes and would be subject to the availability of water under normal irrigation practice under existing water rights.

VI

The granting of a permit to Application 30189 is in the public interest and economic welfare of the State of Nevada and the County of Elko.

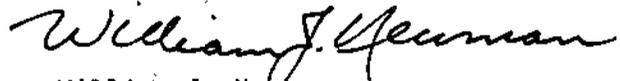
VII

An agreement with the owner of the reservoir is not required under Nevada statute as there is no diversion of water from a primary permit of record by the holder of a secondary permit of record. 8/

RULING

The protest to Application 30189 is hereby overruled and a permit will be issued to Application 30189 on the grounds that the granting will not adversely affect the existing irrigation use and will be in the public interest and economic welfare of the State of Nevada and the County of Elko. The permit will be issued subject to existing water rights and the availability of water under normal irrigation practice under existing water rights and upon payment of the statutory fees.

Respectfully submitted,



William J. Newman
State Engineer

WJN/bc

Dated this 30th day of

November, 1979.

FOOTNOTES

1. Public record available in the office of the State Engineer.
2. Public record available in the office of the State Engineer.
3. Transcript of August 20, 1979, hearing is a public record in the office of the State Engineer.
4. NRS 533.025 and NRS 533.030, Section 1.
5. NRS 533.370, Section 4.
6. NRS 533.010 and NRS 233B.037.
7. NRS 533.030, Section 2.
8. NRS 533.440.