

IN THE MATTER OF AN APPLICATION)
FOR AN EXTENSION OF TIME TO PERMIT)
9405 BY THE WALKER RIVER IRRIGATION)
DISTRICT, LYON COUNTY, NEVADA)

R U L I N G

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INTRODUCTION

An Application For An Extension of Time for filing the Proof of Completion of Work to Permit 9405 was submitted to the office of the State Engineer on March 14, 1979 by the Walker River Irrigation District.

FINDINGS OF FACT

I

Application 9405 was filed on January 23, 1931 by the Walker River Irrigation District to divert 3,000 c.f.s. and/or 186,000 acre-feet of water to be impounded in a reservoir at Hoye Canyon on the West Walker River for irrigation, stockwatering and domestic purposes. The point of diversion is described as within the NW1/4 of Section 15, T.10N., R.23E., M.D.B.& M. The place of use is described as 100,000 acres of irrigable lands in the boundaries of Walker River Irrigation District. The period of use to be from January 1 to December 31 of each year. 1/

An Amended Application to Application 9405 was filed on May 26, 1932 by the Walker River Irrigation District for permission to store 200,000 acre-feet of water which includes 50,000 acre-feet refill so as to take the entire river flow estimated at 3,500 c.f.s. for irrigation and domestic purposes. The impounding dam to be constructed across the West Walker River channel at Hoye Canyon situated in the NW1/4 SE1/4 of Section 17, T.10N.; R.23E., M.D.B.& M., the south end extending into the SW1/4 SE1/4 of said Section 17. 2/

A permit was issued to Application 9405 on August 18, 1954 for 200,000 acre-feet storage for irrigation and domestic purposes. The Proof of Commencement of Work was filed on March 9, 1955. The Proof of Completion of Work was due on March 18, 1957. Applications for an Extension of Time for filing the Proof of Completion of Work have been approved each year since 1957 by the State Engineer. 3/

II

An Application for an Extension of Time for filing the Proof of Completion of Work to March 18, 1980 was received in the office of the State Engineer on March 14, 1978. The extension of time was requested on the grounds that litigation by the State of California is threatened if the project is started before the California-Nevada Interstate Compact is consented by Congress. 4/

III

A protest to the granting of an Application for an Extension of Time for the filing of the Proof of Completion of Work to Permit 9405 was filed on February 22, 1979 by Louvella M. Banner, as Executrix of the Estate of Joseph T. Banner, deceased, and Frank Bosler. The basis of the protest is that the predecessors in interest of the property now owned by Banner and Bosler entered an agreement with the Walker River Irrigation District reserving a flood plain easement for the proposed Hoyo Canyon Dam and that more than 30 years have elapsed since the property has been burdened with this easement causing damage. 5/

IV

A protest to the granting of an Application for an Extension of Time for the filing of the Proof of Completion of Work to Permit 9405 was filed on March 2, 1979 by the Topaz Development Corporation. The basis of the protest is that more than thirty (30) years have elapsed since the subject property owned by this protestor has been burdened with a flood plain easement and no dam has yet been constructed nor will one ever be constructed. 6/

V

A protest to the granting of an Application for an Extension of Time for the filing of the Proof of Completion of Work to Permit 9405 was filed on April 16, 1979 by the Board of Mineral County Commissioners. The basis of the protest is that the Walker River Irrigation District has had 30 years to divert the waters of the Walker River for storage in the Hoyo Canyon Dam and has failed to do so and it is unlikely such construction would even take place in the next 10 years. Because of the delay between granting the permit and the present extension requested, it is clear that diligence has not been exercised in putting the waters to beneficial use as contemplated by Nevada statutes. Further continuances would leave undecided the fate of pending rights downstream concerns of which are immediate in nature, i.e., a relative constant flow of water to Walker Lake. 7/

VI

A hearing was held before the State Engineer on August 14, 1979 in the matter of the protests to the granting of an application for an extension of time for filing the Proof of Completion of Work to Permit 9405 issued to the Walker River Irrigation District. 8/

Testimony presented in behalf of the Board of Mineral County Commissioners claimed that under the provisions of NRS 533.395 the State Engineer may cancel a permit if he finds that the permittee is not proceeding in good faith and with reasonable diligence to effect appropriation of water. In addition, NRS 533.380 provides that actual construction of the dam must be completed within five years of the date of approval and that a beneficial use of the water be made within ten years of the date of approval. Testimony claimed the Walker River Irrigation District has

not proceeded in good faith and with reasonable diligence in the construction of the Hoye Canyon Dam and in the application of water to a beneficial use as provided by statute.

No testimony was presented in behalf of either Banner and Bosler or the Topaz Development Corporation as protestants at the August 14, 1979 hearing.

Testimony presented in behalf of the Walker River Irrigation District extended to expenses incurred over many years by studies, reports, preparation of dam design and specifications for construction, site examination and test drilling, reviews and updating of reports and construction costs. In addition, testimony was presented to review approval by the voters on two separate occasions for bonding for construction of the Hoye Canyon Dam.

CONCLUSIONS

I

The State Engineer has jurisdiction of the parties and the subject matter of this action. 9/

II

The State Engineer may require proof and evidence to show the holder of a permit is proceeding in good faith and with reasonable diligence to perfect the appropriation. 10/

III

The protestant's testimony, evidence and exhibits did not demonstrate a significant lack of good faith and reasonable diligence by the Walker River Irrigation District to proceed with the construction of the Hoye Canyon Dam.

IV

Under the provisions of NRS 533.380 Section 1, the State Engineer is required to set the times for filing the Proofs of Commencement of Work, Completion of Work and Beneficial Use. NRS 533.380 Section 3, provides the authority for the State Engineer to grant extensions to the time limits set in the terms and conditions of the permit.

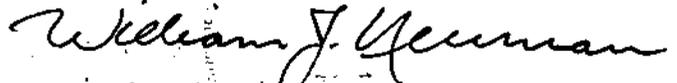
V

The permittee's testimony, evidence and exhibits demonstrated a continuing effort of good faith and reasonable diligence within the limits of the threatened litigation by the State of California.

RULING

The protests to the granting of a one year extension of time for the filing of the Proof of Completion of Work to Permit 9405 are hereby overruled and the extension will be granted to March 18, 1980, on the grounds that good faith and reasonable diligence have been demonstrated to perfect the appropriation.

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. Public record available in the office of the State Engineer.
4. Public record available in the office of the State Engineer.
5. Public record available in the office of the State Engineer.
6. Public record available in the office of the State Engineer.
7. Public record available in the office of the State Engineer.
8. Transcript of August 14, 1979, hearing is a public record available in the office of the State Engineer.
9. NRS 533.380, Section 3.
10. NRS 533.395.