

IN THE MATTER OF APPLICATIONS (11605, 11606,)
11607, 11608, 11625, 11626, 11660, 11668)
and 11669 FILED BY FLOYD R. AND CARLTON P.)
LAMB TO APPROPRIATE THE WATERS OF CERTAIN :
SOURCES FOR STOCKWATERING PURPOSES AND WHICH)
WERE PROTESTED BY A. M. JOHNSON ON OCTOBER)
25, 1946.)

RULING OF THE
STATE ENGINEER.

Application 11605 was filed by Floyd R. and Carlton P. Lamb on June 12, 1946 for the waters of Cliff Spring located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 14, T. 5 S., R. 52 E., M.D.B.&M., unsurveyed. The water is to be used for stockwatering.

Application 11606 was filed by Floyd R. and Carlton P. Lamb on June 12, 1946 for the waters of an unnamed drainage through the Sundown Reservoir located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 36, T. 5 S., R. 51 E., M.D.B.&M., unsurveyed. The water impounded in the reservoir is to be used for stockwatering.

Application 11607 was filed by Floyd R. and Carlton P. Lamb on June 12, 1946 for the waters of Shirley Spring located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 16, T. 6 S., R. 52 E., M.D.B.&M., unsurveyed. The water is to be used for stockwatering.

Application 11608 was filed by Floyd R. and Carlton P. Lamb on June 12, 1946 for the waters of Indian Spring located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 11, T. 6 S., R. 52 E., M.D.B.&M., unsurveyed. The water is to be used for stockwatering.

Application 11625 was filed by Floyd R. and Carlton P. Lamb on July 1, 1946 for the waters of Black Rock Spring located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 22, T. 7 S., R. 51 E., M.D.B.&M., unsurveyed. The water is to be used for stockwatering.

Application 11626 was filed by Floyd R. and Carlton P. Lamb on July 1, 1946 for the waters of an unnamed drainage through the Antelope Reservoir located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 29, T. 4 S., R. 51 $\frac{1}{2}$ E., M.D.B.&M., unsurveyed. The water impounded in the reservoir is to be used for stockwatering.

Application 11660 was filed by Floyd R. and Carlton P. Lamb on August 9, 1946 for the waters of Kihibab Spring located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 35, T. 7 S., R. 51 E., M.D.B.&M., unsurveyed. The water is to be used for stockwatering.

Application 11668 was filed by Floyd R. and Carlton P. Lamb on August 19, 1946 for the waters of Pony Spring located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 26, T. 5 S., R. 52 E., M.D.B.&M., unsurveyed. The water is to be used for stockwatering.

Application 11669 was filed by Floyd R. and Carlton P. Lamb on August 19, 1946 for the waters of an unnamed drainage

through Lamb's Pond located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 24, T. 5 S., R. 51 E., M.D.B.&M., unsurveyed. The water impounded in the reservoir is to be used for stockwatering.

All of the applications herein listed were protested by A. M. Johnson.

All of the requirements of the law have been fulfilled and the matter is now before the State Engineer for his decision.

On December 17, 1946, a field investigation of the area in question was made by Assistant State Engineer Hugh A. Shamberger and Deputy State Engineer Edmund Muth. On January 17, March 27 and 28, 1947, a hearing was held at Tonopah, Nevada.

GENERAL DESCRIPTION OF THE AREA

Kawich Valley is a closed basin, entirely within Nye County, Nevada, which is bounded on the east by the Belted Range, on the south by the Piute Mesa, on the west by the Kawich Range and on the north by a low rolling divide which separates it from the south end of the Reville and Railroad Valleys where they join each other near Cedar Troughs. All of the water sources applied for are within this valley. The springs are located in the foothills of the Belted Range and the Piute Mesa, and the reservoirs are located on the valley floor near flood water drainages from the Kawich Range.

PROTESTS

The protests of A. M. Johnson are all based on his claim to ownership of the range and water rights used by his predecessor, the Kawich Cattle Company.

RANGE AND WATER RIGHTS

The Kawich Cattle Company was incorporated February 9, 1917. Prior to this time, the Company operated as the Kawich Cattle Association, unincorporated. It is not definitely known when the Kawich Cattle Association was formed, or what rights were joined in forming the Association. The earliest record in the State Engineer's office of a water filing by the Kawich Cattle Association was on February 28, 1912 when applications 2356 to 2361 inclusive, were filed. All of these filings were made in the vicinity of Kawich Valley. There were no protests to the granting of permits under these applications. Only two applications in this group were perfected, namely 2357, Cliff Spring, and 2359, Indian Spring. These last two applications by assignment are now owned by A. M. Johnson, Bessie Johnson and Walter Scott as joint tenants.

Other filings and assignments of existing rights were made from time to time by the Kawich Cattle Company on portions of their range other than the Kawich Valley.

It is apparent from the record that there were no claimants to range or water rights other than the Kawich Cattle Association in the Kawich Valley, at the time the applications of the Kawich Cattle Association were filed.

In the spring or early summer of 1925, a liquidation of the Kawich Cattle Company took place and all the livestock possible, including cattle and horses, were rounded up and sold. Some 2000 head of cattle and an undetermined number of horses were disposed of. The Kawich Cattle Company never placed any more stock on their range after this date.

On February 25, 1929, the Kawich Cattle Company sold all improvements, water rights and range rights to A. M. Johnson. Subsequently, the title changed to A. M. Johnson, Bessie Johnson and Walter Scott as joint tenants. No stock of any kind was sold in these transactions.

The records of the State Engineer show that on July 31, 1929, A. M. Johnson purchased the range rights and water rights of W. T. & W. M. Cunningham. This sale included the purchase of the "7V and Bar One Brand" together with about 100 head of horses and mules. This range is an area which was grazed in common with the Kawich Cattle Company and is in the vicinity of Stonewall Mountain, some forty miles west of Kawich Valley.

A. M. Johnson testified that he had not placed any cattle of his own upon the Kawich Range. The "Kawich Range" as used here being the area claimed and delineated by the range map filed by the Kawich Cattle Company.

A copy of a lease between A. M. Johnson and Burton E. Riggs dated January 2, 1946, was submitted as evidence during the hearing at Tonopah. This lease covers the Kawich Range. This lease states, among other things, that Burton E. Riggs owns forty-two head of cattle. The testimony of Riggs shows these cattle are grazing in the vicinity of Monte Cristo Spring some 70 or 80 miles from Kawich Valley.

A. M. Johnson testified that some sort of lease or agreement existed between himself and Daniels Brothers and Dahlstrom for the use of the Kawich Range but submitted no documentary evidence of the period of use or magnitude of such use to corroborate his testimony. As near as can be determined by the State Engineer, the use by Dahlstrom was confined to the western portion of the range in the vicinity of Stonewall Mountain and Stonewall Flat between 40 and 50 miles west of Kawich Valley, and the Daniels Brothers use was, according to Jim Daniel's testimony, confined to a natural drift in the same area.

The testimony of A. M. Johnson in support of his claim and right to Indian Spring and the use of Kawich Valley was indefinite and vague, and in the opinion of the State Engineer, insufficient to establish such rights, and no further evidence thereon has been furnished by or in behalf of Mr. Johnson.

The testimony of record shows that Johnny Pass, an Indian, at one time lived at Indian Spring and ran some horses in the vicinity of Kawich Valley; that in 1929 or 1930, Johnny Pass was employed by A. M. Johnson who at that time purchased Johnny Pass's horses but the period of employment and number of horses purchased was not shown. J. Sheenan testified that Johnny Pass left the Kawich area during the year 1930. This testimony was not contradicted.

After reviewing the entire record and evidence, it is the opinion of the State Engineer that A. M. Johnson, et al, have forfeited their rights in the Kawich Valley through years of non-use long prior to the time when they may have claimed a non-use of the range by the establishment of the Tonopah Bombing Range and the Las Vegas Gunnery Range.

RULING

The protests of A. M. Johnson to the granting of permits under applications 11605, 11606, 11607, 11608, 11625, 11626, 11660 and 11668 and 11669 are overruled. Permits will be granted to Floyd R. and Carlton P. Lamb under applications 11605, 11606, 11607, 11608, 11625, 11626, 11660 11668 and 11669 upon payment of the statutory fees for issuing permits.

ALFRED MERRITT SMITH
State Engineer

Dated this 8th day of August, 1947.