

IN THE MATTER OF APPLICATIONS NOS. 12947 TO 12957 INCLUSIVE, FILED BY THE UNITED STATES OF AMERICA, DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION TO CHANGE THE PLACE OF USE OF CERTAIN WATERS OF THE HUMBOLDT RIVER HERETOFORE APPROPRIATED, IN PERSHING COUNTY, NEVADA.

- Amended -

RULING

See Ruling 49
Dated MAY 24, 1950

On March 16, 1949 the United States of America, Department of Interior, Bureau of Reclamation, filed eleven applications to change the place of use of certain appropriated waters of the Humboldt River. These applications, numbered 12848 to 12858, were protested by Marie Anderson, et al, the protestants in the present case. Due to an error being made in including certain lands in these applications, they were withdrawn on August 4, 1949. On May 31, 1949, prior to the date of withdrawal, the United States of America, through the Bureau of Reclamation, filed eleven new applications which bear our serial numbers 12947 to 12957 inclusive. These applications of later date are now under consideration and are herewith briefly described:

Application No. 12947 to change the place of use of 3.61 c.f.s. or 562.18 acre-feet of decreed water of the Humboldt River. This application is to enlarge the place of use as described under Permit No. 9928, which permit was granted to change the point of diversion and place of use of 3.61 c.f.s. or 562.18 acre-feet of water decreed to lands of the Russell Land & Cattle Company as described in the Humboldt River Decree.

Application No. 12948 to change the place of use of 13.732 c.f.s. or 1961.64 acre-feet of decreed water of the Humboldt River. Said application is to enlarge the place of use as described in Permit No. 9821, which permit changed the point of diversion and place of use of this amount of water which was decreed to lands of W. R. and Josephine M. Chadwick, as described in the Humboldt River Decree.

Application No. 12949 to change the place of use of 13.81 c.f.s. or 2626.27 acre-feet of decreed waters of the Humboldt River. This application is to enlarge the place of use as described in Permit No. 9735 which permit changed the point of diversion and place of use of 13.81 c.f.s. or 2626.27 acre-feet of water decreed to lands of Leroy A. and Jessie Bain, as described in the Humboldt River Decree.

Application No. 12950 to change the place of use of 10.10 c.f.s. or 2988.29 acre-feet of the decreed waters of the Humboldt River. The purpose of the application is to enlarge the place of use as described in Permit No. 9734, which permit changed the point of diversion and place of use of this amount of water which was originally decreed to lands of Louis G. and Katherine V. Hammond, as set forth in the Humboldt River Decree.

Application No. 12951 to change the place of use of 6.52 c.f.s. or 1282.87 acre-feet of the waters of the Humboldt River. This application is to enlarge the place of use as described in Permit No. 9733, which permit changed the point of diversion and place of use of 6.52 c.f.s. or 1282.87 acre-feet of water decreed to the lands of Zabulon Silve and Celina Silve as set forth in the Humboldt River Decree.

Application No. 12952 to change the place of use of 103.877 c.f.s. or 17,315.87 acre-feet of the waters of the Humboldt River. Said application is to enlarge the place of use as described in Permit No. 9732, which permit changed the point of diversion and place of use of the above amount of water which was decreed to the lands of the Ellison Ranching Company as described in the Humboldt River Decree.

Application No. 12953 to change the place of use of 19.993 c.f.s. or 4145.06 acre-feet of the waters of the Humboldt River. This application enlarges the place of use as described in Permit No. 9730, which permit changes the point of diversion and place of use of this amount of water which was decreed to the lands of Charles S. Aldous and Hortense B. Aldous as described in the Humboldt River Decree.

Application No. 12954 to change the place of use of 37.638 c.f.s. or 6084.06 acre-feet of the waters of the Humboldt River. Said application is for the purpose of enlarging the place of use as described in Permit No. 9731 which changed the point of diversion and place of use of the above amount of water which was decreed to the lands of John G. Taylor, Inc. and which lands are described in the Humboldt River Decree.

Application No. 12955 to change the place of use of 77.329 c.f.s. or 18,319.22 acre-feet of the decreed waters of the Humboldt River. The purpose of said application is to enlarge the place of use as described in Permit No. 9729, which permit changed the point of diversion and place of use of 77.329 c.f.s. or 18,319.22 acre-feet of water decreed to the lands of the Filippini Ranching Company as described in the Humboldt River Decree.

Application No. 12956 to change the place of use of 5000 c.f.s. or 100,000 acre-feet of water heretofore appropriated under Permit No. 9716. Said application No. 12956 is to enlarge the place of use as described in said Permit No. 9716.

Application No. 12957 to change the place of use of 9.386 c.f.s. or 1657.57 acre-feet of decreed waters of the Humboldt River. Said application is for the purpose of enlarging the place of use as described in Permit No. 10065, which permit changes the point of diversion, manner and place of use of 9.385 c.f.s. or 1657.57 acre-feet of water decreed to the lands of John G. Taylor, Inc. as described in the Humboldt River Decree.

The place of use as described under Application Nos. 12947 to 12957 inclusive, is the same and lies within the exterior boundaries of the Pershing County Water Conservation District with the exception of certain small areas.

Said applications were protested by Marie Anderson on behalf of herself, Eric Hostman and Henry Brink on September 29, 1949.

The above numbered applications and protests to the granting of same came on regularly for hearing before the State Engineer after due notice thereof having been first given, pursuant to the provisions of the laws of Nevada, at Lovelock, Nevada, on the 21st day of November, 1949. The following appearances were made:

E. J. Skeen, Attorney for the Bureau of Reclamation,
Salt Lake City - For the Applicant.

Wm. M. Kearney, Attorney for Protestant,
Reno, Nevada.

Hugh A. Shamberger, Assistant State Engineer,
For the State Engineer

Edmund Muth, Special Deputy State Engineer

HISTORICAL

The Pershing County Water Conservation District was incorporated in 1927 and at that time had about 30,200 acres of irrigable lands within its boundaries of which 21,096 acres had decreed water rights from the Humboldt River. Land in the Lovelock Valley not within the district having decreed water rights amounted to about 11,600 acres.

In order to obtain water to irrigate the irrigable lands within the district not having decreed water rights and to supplement the decreed water rights, the district purchased considerable land and appurtenant water rights in the Battle Mountain area and within the reservoir site and made application to the State Engineer for permission to change the point of diversion and place of use of these waters. These applications were approved and bear the following serial numbers: 9729, 9730, 9731, 9732, 9733, 9735, 9928 and 10065.

Applications Nos. 9729 to 9735 inclusive were filed in the name of the Pershing County Water Conservation District and on September 8, 1936 were transferred to the United States of America. Applications Nos. 9928 and 10065 were filed by the United States of America.

The total amount of water available for transfer by virtue of Permits Nos. 9729-9735 inclusive, 9928 and 10065 is 49604.66 acre-feet as corrected by stipulations.

Application No. 9821 was filed by the Pershing County Conservation District for the purpose of transferring certain waters affected by the construction of Rye Patch Reservoir. This permit was transferred to the United States of America.

Application No. 9716 was filed by the Pershing County Water Conservation District to store 100,000 acre-feet of the waters of the Humboldt River. This permit was transferred to the United States of America on September 8, 1936.

On October 1, 1934 an agreement was entered into between the United States of America and Pershing County Water Conservation District whereby the United States was to acquire certain rights of way and construct a dam on the Humboldt River near Rye Patch and the District was to acquire certain water rights, easements, etc. A contract was let for the dam on December 1, 1934 and the structure was completed the latter part of 1936. Under the original project the majority of the lands to be irrigated were located in the lower valley, southerly from Lovelock, and only scattered areas were located in the Upper Valley northerly from Lovelock.

Later a supplemental agreement was entered into between the United States of America and the Pershing County Water Conservation District to provide for the annexation of the Pitt Ranch and other lands in the Upper Valley and also to implement the excess land provisions which is in the original contract. Later on other additions were made to the District and the present boundaries are now as shown on Applicant's Exhibit "A" and include approximately 40,070 irrigable acres.

Within the exterior boundaries of the District there are a few parcels of land that are not a part of the district lands. Two of these parcels are owned by parties to the protest, namely Eric Hostman and Henry Brink.

THE ISSUES

The protest filed by Marie Anderson on behalf of herself, Eric Hostman, Henry Brink and others similarly situated to the granting of permits under Applications Nos. 12947 to 12957 inclusive, read as follows:

"That the State Engineer is without jurisdiction to hear or grant said application; that applicant does not own the lands where the water is proposed to be used nor the lands from which the water is sought to be taken; that the conveyance

losses will consume said water in transit and thereby invade and impair the existing vested rights of protestants. That protestants have not given authority to applicant to transfer water to protestants' lands. That the bulk of the lands where water is proposed to be used already have full statutory water rights; that the lands from which said water is proposed to be taken will not, in effect, be stripped of water and the change will merely constitute a paper change with the original lands still maintaining their usual and customary amount of water. That the application of applicant is beyond its jurisdiction and authority to file and the same is filed without legal authority."

From the protest and the testimony submitted at the hearing in Lovelock it appears that the main issues raised by protestant are about as follows:

1. That the applicant is not authorized or empowered to file such applications, or to irrigate the land named under the application.
2. That the State Engineer has no jurisdiction to grant the applications because the lands in some instances are not susceptible to irrigation, and the owners of the lands do not desire to have the lands irrigated.
3. That applicant does not own the lands to which the water is intended to be delivered.
4. That the protestants have not given authority to the applicant to transfer water to protestants' lands.

As heretofore stated, the applications before us have as their purpose the legalizing of the use of water, already appropriated, on certain lands within the Pershing County Water Conservation District which were not included in the District when it was originally established.

The Pershing County Water Conservation District originally entered into a contract with the United States of America, with the Bureau of Reclamation, whereby the Government advanced money for the construction of Rye Patch Dam, and also the purchase of upstream lands and appurtenant water rights. The contract provided for the repayment of the obligation to the Government within forty years following completion and for the operation and maintenance of the project by the District. After the District acquired the lands and water rights, the cost of same was paid by the Government and thereafter the title to the lands and the permits to transfer the water to the project were assigned to the

United States of America. It is presumed that following the completion of the repayment of the money owed the Government, the title will be transferred to the Pershing County Water Conservation District.

The Pershing County Water Conservation District, under statutory authority, has enlarged the size of the District and through the Bureau of Reclamation are following the legal procedure for making the District waters appurtenant to all of the district lands.

If the United States of America is not legally empowered to file the applications being considered herein, then it could be said that it was not legal for the district to transfer the water rights under Permits Nos. 9729 to 9735 inclusive to the United States of America, nor was it legal for the United States of America to file Applications Nos. 9928 and 10065 all of which are the subject of Applications 12947 to 12957 inclusive. We do not agree with the contention of protestant in this matter. It is our opinion that the United States of America, Department of Interior, Bureau of Reclamation, is a proper applicant.

Considerable discussion was had at the hearing regarding lands described in the application to which water was to be placed to beneficial use. It was pointed out that the proposed places of use covered lands not within the District and also lands which were not susceptible to irrigation. This is true as an examination of the map showing the boundaries of the District (Applicant's Exhibit A) as compared to the map filed in support of the applications clearly indicates. Also, Mr. E. J. Skeen, Counsel for Applicant, stated at the hearing that the Government would consent to amending the applications so that the places of use would conform only to district lands. Apparently the reason for describing the place of use in such a manner was to simplify the descriptions for publication purposes. Following the granting of permits it will be necessary for the United States to perfect said permits in accordance with Nevada State Law. Proofs of beneficial use and cultural maps would have to be prepared and eventually be filed by the Conservation District. Certainly there is no basis in law why lands outside of the District should be considered in such proofs. The Pershing County Water Conservation District has no legal right to place any district waters on lands not within the district.

RULING

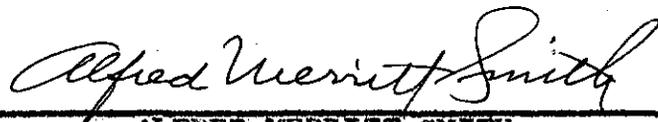
The protests to the granting of permits under Applications Nos. 12947 to 12957 inclusive are herewith overruled and permits will be issued subject to the terms and conditions set forth in the original permits. The permits to change the place of use issued under Applications Nos. 12947 to 12957 inclusive will be in the following amounts:

App. No.	Original Permit to change decreed rights	Total Acre-Feet	Permits to be issued in the following amounts		
			c.f.s. flow		
			Mar. 15 Apr. 28	Apr. 28 June 13	June 13 Sept. 15
12947	9928	562.17	3.61	1.162	0.658
12948	9821	1,925.52	13.529	7.108	0.117
12949	9735	2,626.30	13.509	7.165	3.898
12950	9734	3,023.49	9.911	7.633	7.616
12951	9733	1,282.01	6.304	3.836	1.879
12952	9732	14,432.32	91.55	24.757	20.071
12953	9730	4,154.08	19.946	9.562	7.760
12954	9731	4,579.42	30.383	11.078	4.088
12955	9729	15,434.95	77.325	40.791	24.600
12956	9716 *	100,000	5000 c.f.s. Sept. 15 to Mar. 15 of following year.		
12957	10065	1,647.18	9.390	3.302	2.583

* Permitted Storage Right.

The conditions set forth in the permits will include the filing of a cultural map showing the place of use of water in support of beneficial use together with other needed data to show amount of water transferred.

Respectfully submitted,



ALFRED MERRITT SMITH
State Engineer

Dated May 5, 1950.

May -