

IN THE MATTER OF APPLICATIONS )  
29534, 29546, 29666, 29667, & )  
29668 TO APPROPRIATE WATER )  
FROM THE SLOUGH IN ELKO COUNTY,) )  
NEVADA. )

R U L I N G

GENERAL:

Application 29534 was filed on July 10, 1975 in the name of Blair G. and Josephine B. Johns to appropriate 47.0 c.f.s. of water from The Slough, the proposed point of diversion being located within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  Section 23 T.35N., R.62E. The water is to be used for the irrigation of 1,920 acres located within all of Section 23, SW $\frac{1}{4}$  NW $\frac{1}{4}$ , W $\frac{1}{2}$  SW $\frac{1}{4}$ , SE $\frac{1}{4}$  SW $\frac{1}{4}$  Section 24, all of Section 25, E $\frac{1}{2}$ , E $\frac{1}{2}$  W $\frac{1}{2}$  Section 26, all in T.35N., R.62E., M.D.B.&M. Four separate protests to the granting of Application 29534 were filed on September 24, 1975, the names of the protestants being Rose Goodwin, Ballard Ranches, Inc., Robert R. Wright Company, and D. Vernon and Joann Bradish Dalton. The stated grounds for these protests were identical, being: "Protestant is the owner of the lands described on Exhibit A attached hereto, and that said lands have water rights appurtenant thereto from streams and sources that may be deemed tributary to The Slough; Protestant is informed and believes that protestants water rights and the water rights of others upon streams and sources that may be deemed to be tributary to The Slough fully appropriate the water; and that except for occasional waste water, there is no unappropriated water to serve the applicant." Each of the four protests included as Exhibit A a property description of the land owned by the protestant. On September 25, 1975, a protest was filed in the name of LeRoy F. Bush on the grounds that: "Pursuant to the Order of Determination and Final Decree governing the waters of Rice Creek dated May 2, 1922, the protestant is entitled to use all of the waters of Rice Creek. Therefore, to the extent that the above application applies to the waters of Rice Creek, the applicants are not entitled to a permit for the use of any waters on said creek." On September 29, 1975, a protest was filed in the name of Loyd Sorenson on the grounds that: "The Protestant has vested rights to all waters flowing in Johnson Creek and one-half of the waters flowing in Wiseman Creek, together with the vested rights in all waters of certain other unnamed streams in Clover Valley, Nevada. All of the above streams are fully appropriated with vested rights. To the extent that the above application purports to claim waters from any of said streams, said application should be denied."

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Application 29534 became ready for action on September 29, 1975. On September 30, 1975, a protest was received in the name of Kenneth L. Johns which includes the following grounds for protest: "In Application No. 29534, parties are applying for 47 second feet of water. It doesn't state where the waters exist from to be used. It doesn't give a description of lands water to be used on. Waters applied for could affect the irrigation and waters filed on my ranch." Since this protest was received after the deadline of September 29, 1975, it was returned to the protestant and the \$10.00 filing fee remitted.

All of the protests filed under Application 29534, as described above, seek denial of the application with the exception of the late protest filed by Kenneth L. Johns which seeks issuance subject to prior rights.

On July 17, 1975, Application 29546 was filed, and on September 25, 1975, Applications 29666, 29667 and 29668 were filed, all in the name of Taylors, Ltd. and all to appropriate water from The Slough. Application 29546 was filed in the amount of 5.0 c.f.s., the point of diversion being located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  Section 10, T.35N., R.62E., M.D.B.&M. and the proposed place of use being 300 acres located within the W $\frac{1}{2}$  and W $\frac{1}{2}$  SE $\frac{1}{4}$  Section 10, SW $\frac{1}{4}$ , SW $\frac{1}{4}$  NW $\frac{1}{4}$  Section 14, T.35N., R.62E., M.D.B.&M.

Applications 29666, 29667 and 29668 were each filed in the amount of 5.0 c.f.s. for the irrigation of 300 acres. The point of diversion under 29666 is located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  Section 16, T.35N., R.62E., M.D.B.&M., and the place of use is described as all of Sections 21 and 22 of said Township and Range. The point of diversion under Application 29667 is located within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  Section 16, T.35N., R.62E., M.D.B.&M., and the place of use is described as all of Sections 16 and 22 of said Township and Range. The point of diversion under Application 29668 is located within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 16, T.35N., R.62E., M.D.B.&M., and the place of use is described as all of Sections 16 and 22 of said Township and Range.

On December 23, 1975, identical protests were filed under Applications 29546, 29666, 29667 and 29668 in the name of Robert R. Wright Company on the grounds that: "Protestant is the owner of the lands described in Exhibit A attached thereto, and that said lands have water rights appurtenant thereto from streams and sources that may be deemed tributary to The Slough; protestant is informed and

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believes the protestant's water rights and the water rights of others upon streams and sources that may be deemed to be the tributary of The Slough fully appropriate the water; and that except for occasional unavoidable runoff water there is no unappropriated water to serve the applicant."

On December 30, 1975 identical protests were filed under all four applications in the name of Ballard Ranches, Inc. on identical grounds as stated in the Robert R. Wright Company protest in the preceding paragraph. Each of the Ballard Ranches and Robert R. Wright Company protests included a description of the protestants' lands described as Exhibit A.

Also on December 30, 1975, identical protests were filed under each of these four applications, in the name of Vernon Dalton on the grounds that: "The water, 5 second-feet, is not available at this location from January through December 31 due to prior water rights and could not be used to sustain permanent crops."

All protests filed under these four applications seek denial. Applications 29546, 29666, 29667, and 29668 became ready for action by the State Engineer's Office on January 5, 1976. On February 23, 1976, ownership of these four applications was assigned from Taylors, Ltd. to Jack G. Taylor in accordance with a certified copy of a deed dated December 31, 1975, which was submitted to the office of the State Engineer.

A field investigation into the matter of protested Application 29534, 29546, 29666, 29667 and 29668 was conducted on Wednesday, October 20, 1976, by members of the State Engineer's Office. The field investigation was attended by Blair G. Johns, applicant under Application 29534, by representatives of Jack G. Taylor, applicant under Applications 29546, 29666, 29667 and 29668, and by all protestants with the exception of Leroy F. Bush.

Evidence in the field and observations made by eyewitnesses indicates that there are periods of the year, particularly during the spring snowmelt runoff, when there is water available for appropriation at the points of diversion under these applications. The ranches owned by the protestants are all located above (upstream) these five points of diversion and would not be affected if the water were diverted for beneficial use. There are numerous proofs of appropriation, on file in the State Engineer's Office, which claim vested rights on ranches owned

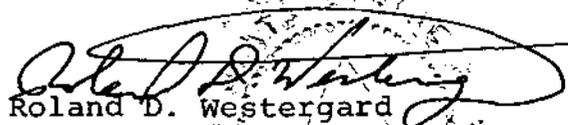
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by the protestants to the use of water from streams tributary to The Slough. These claims of vested rights are unadjudicated, but where there is evidence that vested rights may exist on a stream system the State Engineer is restrained from distributing water until such time as the limit and extent of such rights has been established by a statutory adjudication proceeding. Upstream water users cannot therefore be prevented from diverting water under these upstream claims of vested rights in order to satisfy any permits issued by the State Engineer for downstream diversion. Because the diversion of water under these five applications could be made only when available and only after upstream claims of vested rights had been satisfied, it is the opinion of the State Engineer that the issuance of permits under Applications 29534, 29546, 29666, 29667 and 29668, subject to existing rights, will not interfere with existing rights and will not be detrimental to the public interest.

RULING:

The protests to the granting of Applications 29534, 29546, 29666, 29667 and 29668 are hereby overruled. Permits will be issued, subject to existing rights, upon receipt of the statutory permit fees.

Respectfully submitted,

  
Roland D. Westergard  
State Engineer



RDW:BAR:sk

Dated this 4th day  
of February, 1977.