

IN THE MATTER OF APPLICATION 29669)
TO APPROPRIATE WATER FROM STEPTOE)
CREEK, WHITE PINE COUNTY, NEVADA.)

R U L I N G

FINDINGS OF FACT

179

I

Application 29669 was filed on September 25, 1975, in the name of the Ely Municipal Water Department to appropriate 10.0 c.f.s. of water from Steptoe Creek, to be diverted within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 2, T.16N., R.63E., M.D.B.& M., and to be used for irrigation purposes on 1,280 acres within portions of Sections 26, 27, 34 and 35, T.17N., R.63E., M.D.B.& M.

II

A timely protest to the granting of Application 29669 was filed on February 2, 1976, in the name of El Tejon Cattle Co., on the grounds that: "The granting of this application would impair and conflict with the value of existing water rights as there are insufficient waters to service all of the permitted rights on this system." This protest seeks denial of the application.

III

A second timely protest to the granting of Application 29669 was filed on February 2, 1976, in the name of Steptoe Ranch Co., on the following grounds: "That it would impair and conflict with the value of existing rights on Steptoe Slough, more particularly on Certificate Nos. 313 and 4010. There are no excess waters on Steptoe Creek to be appropriated." This protest seeks denial of the application.

IV

A third timely protest to the granting of Application 29669 was filed on February 19, 1976, in the name of the State of Nevada, Department of Fish and Game, on the grounds that: "At the time the protestant purchased property on upper Steptoe Creek for the purpose of creating a reservoir, water was conveyed by the grantor, C-B Ranch Company.



Application 29669 may jeopardize the ability to use the water when the reservoir is created. We request that a field investigation be conducted and all ramifications be considered before making a decision on Application 29669. This protest will be withdrawn if, in the opinion of the protestant, adequate safeguards are provided for wildlife and its habitat." The protest seeks denial "unless adequate safeguards are provided for wildlife and its habitat."

V

Application 29669 became ready for action by the State Engineer's office on February 26, 1976.

VI

A field investigation into the matter of Application 29669 was conducted on July 22, 1976, by members of the State Engineer's office. The applicant and all three protestants were represented at the investigation. Report of Field Investigation No. 577, (hereafter referred to as Report No. 577) of record in the State Engineer's office, describes the results and findings of this field investigation and is made a part of this Ruling by reference.

VII

Steptoe Creek is intermittent in nature at the point of diversion under Application 29669. Approximately 9.6 miles downstream (north) from this point, the Steptoe Creek channel becomes tributary to Duck Creek and the Steptoe Slough, from where any flow enters Bassett Lake and then flows north through Steptoe Valley for a distance of approximately 45 miles to its terminus in Goshute Lake in T.25N., R.64E., M.D.B. & M. Flow in Steptoe Creek reaches the point of diversion under Application 29669 only during early spring run-off and during periods of heavy rainfall in the Steptoe Creek watershed. There is no information available regarding the rate of flow in Steptoe Creek which would be necessary at the point of diversion under Application 29669 before it would flow the 9.6 miles to Steptoe Slough without all flow being lost through seepage

and evaporation.

VIII

The proposed place of use under Application 29669 is a ranch known locally as the Georgetown Ranch which is owned by the City of Ely and is leased to private individuals for farming and grazing. Portions of this ranch are covered by existing rights from several sources, including primarily several wells, Murry Canyon Creek and effluent from the Ely sewage treatment plant. All such rights are of record in the name of the Ely Municipal Water Department, and any rights granted under Application 29669 would be supplemental to other existing rights where applicable.

IX

The proposed place of use also includes two certificated water rights from Steptoe Creek, those being Certificate 1087 issued under Permit 828 and Certificate 2087 issued under Permit 7585. However, these rights are of record in the name of C-B Ranch Company and are not owned by the Ely Municipal Water Department. These rights were originally owned by the City of Ely, but were conveyed to the C-B Ranch Co., under terms of an agreement dated January 9, 1957, as described under Report No. 577.

X

There are two water rights of record on Steptoe Creek whose points of diversion are below that of Application 29669. Permit 7585, described under Item IX above is located approximately $\frac{1}{4}$ -mile downstream within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 2, T.16N., R.63E., M.D.B. & M., in the amount of 3.017 c.f.s. for the irrigation of 301.7 acres. The period of use under this certificate is October 1 to April 1 of the following year. The second is Certificate 3101 issued under Permit 10873 in the amount of 2.0 c.f.s. for the irrigation of 99.62 acres and is of record in the name of Albert Romero. The point of diversion is located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 25, T.18N., R.63E., M.D.B. & M., approximately 8.3 miles below the Application 29669 point of diversion. However, under the terms of an agreement dated July 6, 1956, between Albert Romero and the C-B Ranch Co., described under Report No. 577, Certificate 3101 is allowed to divert from Steptoe Creek only water which

originates below (north of) the northernmost property line of the CCC Ranch. The proposed point of diversion under Application 29669 is located approximately 2.5 miles below the CCC Ranch property line and U.S.G.S. topographic maps indicate a minimal tributary contribution to the flow of Steptoe Creek between the property line and the point of diversion.

All other rights on this stream system below the proposed point of diversion under Application 29669 are downstream of the confluence of Steptoe Creek with Steptoe Slough and Duck Creek.

XI

Steptoe Creek is the subject of a decree issued on November 6, 1935 by the Seventh Judicial District Court of the State of Nevada. All rights allowed under that decree are located upstream of the point of diversion under Application 29669.

CONCLUSIONS

1. The Nevada State Engineer has jurisdiction of the parties and the subject matter of this action in accordance with NRS 533.025 and NRS 533.030, subsection 1.

2. In accordance with NRS 533.430, subsection 1, any permit to appropriate water issued by the State Engineer on an adjudicated stream system shall be issued subject to all existing rights and to the decree. Accordingly, the granting of a permit under Application 29669 would be subject to all other permitted and decreed rights on the stream system.

3. Because of the great distance between the point of diversion under Application 29669 and that under Permit 10873 (approximately 8.3 miles) and the Steptoe Slough (approximately 9.6 miles), and because of the relatively small slope of the valley floor over those distances (0.0039, based upon U.S.G.S. topographic map, McGill Quadrangle, 15 minute series), it is the judgement of the State Engineer

that a flow of 10.0 c.f.s. at the proposed point of diversion would not reach the points of diversion of downstream existing rights. In addition, it is the judgement of the State Engineer that at such times as the flow in Steptoe Creek at the proposed point of diversion is great enough to reach downstream existing rights, the diversion of 10.0 c.f.s. as proposed under Application 29669 would have no appreciable effect on satisfying downstream rights.

4. The State Engineer shall approve applications to appropriate water where the proposed use does not impair the value of existing rights or be otherwise detrimental to the public interest, as described under NRS 533.370, subsection 1.

RULING

The protests to the granting of Application 29669 are hereby overruled on the grounds that the granting of a permit under this application will not impair the value of existing rights or be otherwise detrimental to the public interest. A permit will be granted under Application 29669, subject to existing rights, upon receipt of the statutory permit fees.

Respectfully submitted,


Roland D. Westergard
State Engineer

RDW/BAR/dc

Dated this 30th day
of June 1977.