

IN THE MATTER OF APPLICATION 26427 )  
TO CHANGE THE PLACE OF USE OF )  
WATERS OF AN UNDERGROUND SOURCE AND )  
APPLICATION 26446 TO CHANGE THE POINT )  
OF DIVERSION AND PLACE OF USE OF WATERS) )  
OF AN UNDERGROUND SOURCE BY CAPPAERT )  
ENTERPRISES IN NYE COUNTY, NEVADA. )

R U L I N G

General:

Application 26427 was filed on November 30, 1971, by Cappaert Enterprises to change the place of use of 1.0 c.f.s. of the waters of an underground source heretofore appropriated under Permit 23927. The proposed point of diversion is within the NE $\frac{1}{4}$ SW $\frac{1}{4}$  Section 14, T.17S., R.50E., M.D.B.&M. The proposed place of use is 20 acres in the S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 10, T.17S., R.50E., M.D.B.&M. The existing place of use under Permit 23927 is 20 acres in the E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  Section 22, T.17S., R.50E., M.D.B.&M. The manner of use is irrigation and domestic purposes.

Application 26446 was filed on December 21, 1971, by Cappaert Enterprises to change the point of diversion and place of use of 6.0 c.f.s. of the waters of an underground source heretofore appropriated under Permit 25564. The proposed point of diversion is within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 8, T.18S., R.51E., M.D.B.&M. The proposed place of use is 1080 acres within the S $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$  Section 11, S $\frac{1}{2}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$  Sec. 12, T.18S., R.50E., N $\frac{1}{2}$ S $\frac{1}{2}$ , Section 7, W $\frac{1}{2}$ E $\frac{1}{2}$ , SW $\frac{1}{4}$  Section 8, W $\frac{1}{2}$ E $\frac{1}{2}$ , W $\frac{1}{2}$  Sec. 17, SE $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$  Sec. 18, T.18S., R.51E., M.D.B.&M. The existing point of diversion is within the NE $\frac{1}{4}$ SW $\frac{1}{4}$  Sec. 7, T.18S., R.51E., M.D.B.&M. The existing place of use is 1080 acres within the N $\frac{1}{2}$ SW $\frac{1}{4}$  Sec. 7, T.18S., R.51E., SE $\frac{1}{4}$ SE $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$  Sec. 12, NW $\frac{1}{4}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$  Sec. 13, S $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$  Sec. 11, NW $\frac{1}{4}$  Sec. 14, T.18S., R.50E., M.D.B.&M. The manner of use is irrigation and domestic purposes.

A protest to the granting of Application 26427 was filed by the U.S. National Park Service on February 11, 1972. The grounds of the protest are as follows:

"Reference is given to the report, 'Hydrogeology of the Devil's Hole area, Ash Meadows, Nevada,' by William Fiero & G. B. Maxey; on the basis of the information presented in this report, it is indicated that further lowering of the water level in Devil's Hole, Ash Meadows, Nevada would result from the pumping of underground water in this area. This in effect would result in further threat of extinction to the already endangered native fishes of the genus Cyprindon (Desert Pupfish) which inhabit Devil's Hole. In recent months, other springs in the area which provide the habitat for these native fishes have shown

indications of marked decreased flow as a result of the pumping of the underground water sources. Should the subject application to appropriate water be approved, it can be expected that grave consequences to the ecology of this area will result. On the basis of this information, the National Park Service must protest the appropriation of any additional public waters from underground sources in the Ash Meadows - Devil's Hole area."

A protest to the granting of Application 26446 was filed by the U. S. National Park Service on February 15, 1972. The grounds of the protest are substantially similar to the protest on Application 26427, varying only in detail.

The existing place of use of Permit 23297 is also covered under Permit 25566, issued March 27, 1971. The proposed place of use under Application 26427 is presently covered under Permits 25565 and 25582.

The existing place of use of Permit 26446 is presently covered by numerous existing rights. The proposed place of use of Application 26446 is covered under existing permits, with the exception of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  Section 7, T.18S., R.51E., M.D.B.&M. There are existing rights covering a total of 16.5 acres within this subdivision.

Applications 26427 and 26466 are both applications to change prior existing rights. The changes proposed therein do not constitute an expansion of acreage, nor will they provide for additional permitted withdrawal of water from the groundwater basin.

#### RULING

The protests to the granting of Applications 26427 and 26446 are herewith overruled. Permits will be granted under Applications 26427 and 26466 subject to existing rights. The permit under Application 26446 will be further subject to the provision that no more than a total of 16.5 acres will be irrigated within the NW $\frac{1}{4}$ SE $\frac{1}{4}$  Sec. 7, T.18S., R.51E., M.D.B.&M.

Respectfully submitted,

  
Roland D. Westergard  
State Engineer

RDW:PGM: jw

Dated this 5th day of

May, 1972.