

IN THE MATTER OF APPLICATION NO. 15354)
 FILED BY ALBERT ROMEO; APPLICATION NO. :
 15355 FILED BY JAMES T. ELLIOTT; : RULING
 APPLICATION NO. 15558 FILED BY THE CITY :
 OF ELY.)

Description of Applications:

Application No. 15354 was filed on October 26, 1953 by Albert Romeo to appropriate 6.0 c.f.s. of the waters of Robinson Canyon Channel and tributaries for irrigation purposes. The point of diversion is to be within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 14, T. 17 N., R. 63 E., M.D.B.&M., and the proposed place of use is 320 acres of land within the E $\frac{1}{2}$ NE $\frac{1}{4}$ Section 2; N $\frac{1}{2}$ N $\frac{1}{2}$ Section 1, T. 17 N., R. 63 E.; and the S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 36, T. 18 N., R. 63 E., M.D.B.&M. The period of use is from January 1st to December 31st of each year.

Application No. 15355 was filed on October 26, 1953 by James T. Elliott to appropriate 6.0 c.f.s. of the waters of Robinson Canyon Channel and tributaries for irrigation purposes. The point of diversion is to be within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 14, T. 17 N., R. 63 E., M.D.B.&M., and the proposed place of use is 320 acres of land within S $\frac{1}{2}$ N $\frac{1}{2}$ Section 1, T. 17 N., R. 63 E., and NW $\frac{1}{4}$ Section 6, T. 17 N., R. 64 E., M.D.B.&M. The period of use is from January 1st to December 31st of each year.

Under "remarks" of both of the above described applications, the applicants state that the water sought to be appropriated by these applications is water being pumped from the Deep Ruth, Kellinsky and Star Pointer Mine shafts, and waste and sewage water from the new Ruth townsite which flows down Robinson Canyon Channel and joins Murry Channel in the S $\frac{1}{2}$ Section 16, T. 16 N., R. 63 E., M.D.B.&M. and continues in the natural channel to the point of diversion. The applicants further state that the land to be irrigated has been applied for under the Desert Land Act.

The land entries filed to support these applications were approved by the Bureau of Land Management on May 27, 1955.

Protests to the granting of these applications were filed as follows:

On April 23, 1954 by the City of Ely on grounds that the water is fully appropriated by the City of Ely on the Georgetown Ranch.

On May 21, 1954 by the Kennecott Copper Corporation on grounds that the granting of permits under these applications would impair the value of existing rights in that all waters flowing in Robinson Canyon, and all waters normally flowing therein, except in the run-off

season of the year, are waters owned by, belonging to, and developed by the Kennecott Copper Corporation in its underground operations. Said waters are not natural waters coming from natural sources by natural causes, and that said waters referred to in these applications are not subject to appropriation under the laws of the State of Nevada; that the waters in said Robinson Canyon are waters resulting from pumping operations of Kennecott Copper Corporation, and said pumping operations may be stopped at any time at the will of the company; and, that the State Engineer has no right to place any duty upon the Kennecott Copper Corporation for the purpose of maintenance or supply of the water applied for.

Application No. 15558 was filed on March 18, 1954 by the City of Ely to appropriate 11.1 c.f.s. of waste water (Robinson and Murry overflow ditch) for irrigation purposes. The point of diversion is to be within the $SE\frac{1}{4}$ $SW\frac{1}{4}$ Section 10, T. 16 N., R. 63 E., M.D.B.&M. The place of use is proposed as 510 acres of land within the $E\frac{1}{2}$ $SE\frac{1}{4}$ Section 34; $W\frac{1}{2}$ $SW\frac{1}{4}$, $SE\frac{1}{4}$ $SW\frac{1}{4}$ and $SW\frac{1}{4}$ $SE\frac{1}{4}$ Section 35, T. 17 N., R. 63 E.; $NW\frac{1}{4}$ $NW\frac{1}{4}$, $N\frac{1}{2}$ $NE\frac{1}{4}$ $NW\frac{1}{4}$, $NW\frac{1}{4}$ $NE\frac{1}{4}$, $SW\frac{1}{4}$ $NW\frac{1}{4}$ and $NW\frac{1}{4}$ $SW\frac{1}{4}$ Section 2; $NE\frac{1}{4}$ $NE\frac{1}{4}$, $SE\frac{1}{4}$ $NE\frac{1}{4}$ and $NE\frac{1}{4}$ $SE\frac{1}{4}$ Section 3, T. 16 N., R. 63 E., M.D.B.&M. The period of use is to be from March 1st to October 31st of each year.

Protests to the granting of this application were filed as follows:

On October 25, 1954 by Albert Romeo on grounds that said application conflicts with Application 15353 in the name of Albert Romeo on the same source; that said application directly jeopardizes the existing and applied-for rights of Albert Romeo on Robinson Canyon Channel and its tributaries; that said City of Ely has willfully prevented said water from remaining in or near the natural channel through the Georgetown Ranch, and has spread the water on brush lands to keep it from the natural channel; such action by the City of Ely jeopardizes the existing rights as covered by Albert Romeo under Permit No. 10873 and Application No. 15354.

On October 25, 1954 by James T. Elliott on grounds that said application directly conflicts with Application No. 15355 in the name of James T. Elliott on the same source. That said application directly jeopardizes the existing and applied for rights of James T. Elliott to the waters of Robinson Canyon Creek and its tributaries.

General:

A field investigation in the matter of these applications was made by a representative of this office on August 11, 1955. The applicants under the above described applications seek to appropriate

the surplus water of Robinson Canyon Creek Channel made available to the system by the pumping operations of the Kennecott Copper Corporation in the de-watering of the Deep Ruth, Kellinsky and Star Pointer mine shafts at Ruth, Nevada.

At the present a portion of the water being pumped is used by the Kennecott Copper Corporation in their mining operations and to supply domestic water to the Ruth townsite. The excess and waste waters are being abandoned into Ruth Canyon, which is tributary to the Robinson Canyon Channel, in Sections 2 and 12, T. 16 N., R. 62 E., M.D.B.&M.

Robinson Canyon Creek flows easterly and joins with Murry Creek within the city limits of Ely in Section 16, T. 16 N., R. 63 E., M.D.B.&M. From this point the water flows northeasterly in a channel referred to either as "Murry Creek" or "Robinson Canyon Creek". The waters of Murry or Robinson Canyon Creek co-mingle with the waters of Steptoe Creek on the Georgetown Ranch, after spreading over the ranch. The spreading of water on the Georgetown ranch is brought about by the fact that the channel has been obliterated by work done upon the ranch property. Near the northern boundary of the Georgetown Ranch, the water reaches a natural channel (called either "Murry Creek", "Robinson Canyon Creek", or "Steptoe Creek"), and flows in a northerly direction to the proposed point of diversion under Applications Nos. 15354 and 15355. From this point they flow to the Romeo ranch within Section 25, T. 18 N., R. 63 E.

Opinion:

The applicants seek to appropriate the waters of Robinson Canyon Creek (also known as "Steptoe Creek" and "Murry Creek") that are augmented by ground water being pumped by the Kennecott Copper Corporation in their mining operations at Ruth, Nevada, and which have been abandoned into the Ruth Canyon Channel. It is the opinion of this office that when the developed ground water is abandoned into the Ruth Canyon Channel it becomes a part of the flow of the "Robinson-Murry-Steptoe" stream system, and as such must be used to satisfy existing rights before it can be diverted for new appropriations.

It is also the opinion of this office that the Kennecott Copper Corporation is in no way obligated to continue the non-use of the developed water, and that so long as the water remains in their possession they would have first right to its use by making proper application to the State Engineer.

RULING

The protests to the granting of Applications Nos. 15354 and 15355 are herewith overruled on the grounds there is unappropriated water in the source, and that the granting thereof will not impair existing rights or be otherwise detrimental to the public welfare. Upon receipt of the statutory permit fee, a permit will be issued under each application, subject to the following provision and limitation:

"This permit is issued subject to existing rights and with the understanding that any part of the right granted, which is made up of abandoned developed water, does not constitute a permanent right and does not in any manner obligate the Kennecott Copper Corporation to continue the waste and abandonment as it now exists."

Application 15558 will be held in abeyance for a reasonable length of time pending proof by the applicant that there is water available in the source in excess of that required to satisfy existing rights and the rights herewith granted under Applications Nos. 15354 and 15355.

Respectfully submitted,

Hugh A. Shamberger
State Engineer

By *Edmund Muth*

Edmund Muth
Assistant State Engineer

Dated this 25th day
of May, 1956.