

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 43748)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF JENNY CREEK WITHIN)
WINNEMUCCA LAKE VALLEY, PERSHING)
COUNTY, NEVADA.)

RULING

GENERAL

Application 43748 was filed on May 18, 1981, by Walt Ashton to appropriate 0.10 c.f.s. of water from Jenny Creek for stockwater and domestic purposes within the SW1/4 SE1/4 and SE1/4 SW1/4 Section 28, T.30N., R.24E., M.D.B.&M. The point of diversion is described as being within the NE1/4 SW1/4 Section 34, T.30N., R.24E., M.D.B.&M. The application proposes to water 20 head of cattle.¹

FINDINGS OF FACT

I.

Application 43748 was ready for action for permit process review on October 23, 1981. Application 43748 was protested by the U.S. Department of Interior, Bureau of Land Management on October 29, 1981, on the grounds that:¹

"The applicant cannot make legal beneficial use for the following reasons:

(1) The lands containing both the point of diversion and the place of use are public lands administered for the public by the Bureau of Land Management. Applicant has not been authorized to occupy the subject lands and would be in violation of 43 CFR 2801.3 should he do so.

(2) In order to conduct water from the point of diversion to the place of use, public lands in between would have to be crossed. Applicant does not have authorization through the granting of a right-of-way for the proposed pipeline. Without proper authorization, applicant would be in violation of 43 CFR 2801.3.

(3) Applicant is not an authorized permittee on the public lands and therefore cannot legally graze livestock on the public lands. An attempt on his part to do so would constitute trespass in violation of 43 CFR 4140.1 and 4150.1.

Wherefore protestant prays that the application be denied."

¹ Public record in the office of the State Engineer.

The protest submitted by the U.S. Department of Interior, Bureau of Land Management on October 29, 1981, was returned to protestant on November 25, 1981, as said protest was not timely filed with this office.²

II.

On January 7, 1982, the State Engineer's office received a letter dated December 28, 1981, from Lawrence O. Irvin, Manager of C-Punch Corporation stating that the place of use described under Application 43748 and the head waters of Jenny Creek are within deeded lands owned and used by C-Punch Corporation or its predecessors prior to 1903.¹

On April 8, 1982, the applicant was notified by this office of the protest submitted by the Bureau of Land Management on October 29, 1981, and C-Punch Corporation's letter of December 28, 1981. Applicant was requested to submit any information which would dispute the Bureau of Land Management and C-Punch Corporations's statements.¹

On April 28, 1982, the State Engineer's office received a request from Claude E. Hunter, as agent, for postponement of further action in accordance with NRS 533.370(2)(a). Postponement of further action was granted on Application 43748 for a period of one year from May 12, 1982.¹

III.

On June 12, 1984, the State Engineer's office received a letter dated June 11, 1984, from the Bureau of Land Management stating that C-Punch Corporation and Wes Cook were the authorized range users for the place of use described under application 43748.¹

Applicant was notified by certified mail on June 25, 1984, to submit the information requested in the letter dated April 8, 1982, from the State Engineer's office. The return receipt card was received from the addressee on July 9, 1984. To date, no respose has been received from the applicant by this office.¹

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.³

II.

Before either approving or rejecting an application, the state engineer may require such additional information as will enable him to guard the public interest properly.⁴

² NRS 533.365(1).

³ NRS Chapters 533 and 534.

⁴ NRS 533.375.

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate waters where:⁵

- A. there is no unappropriated water in the proposed source, or
- B. the proposed use conflicts with existing rights, or
- C. the proposed use threatens to prove detrimental to the public welfare.

IV.

Sufficient information is available to support the existence of vested rights on the proposed source.⁶

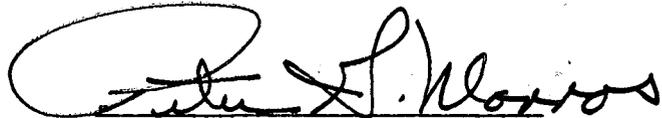
V.

Applicant has failed, to date, to submit the information requested by the State Engineer's office, and therefore has not demonstrated the ability nor the necessity to divert water for a beneficial use in accordance with NRS Chapter 533.

RULING

Application 43748 is herewith denied on the grounds that the applicant has not submitted the information requested by the State Engineer's office and therefore has not demonstrated the ability nor the necessity to divert water for a beneficial use and the granting of said application without the requested information would not be in the public interest.

Respectfully submitted



Peter G. Morros
State Engineer

PGM/SHF/bl

Dated this 20th day of
February, 1985.

⁵ NRS 533.370(3).

⁶ NRS 533.085.