

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 46712)
AND 46713 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF BUTCHER SPRING AND)
POTATO PATCH SPRING IN THE IMLAY)
AREA, PERSHING COUNTY, NEVADA.)

RULING

GENERAL

Application 46712 was filed on March 9, 1983, by Robert E. Meyer to appropriate 1.11 c.f.s. of water from Butcher Spring for mining, milling and domestic purposes within the SE1/4 Section 14; S1/2 Section 15, SE1/4, SE1/4 NE1/4, SE1/4 SW1/4 Section 16; E1/2 Section 21; all of Section 22; N1/2 N1/2, S1/2 NW1/4, SW1/4 NE1/4, N1/2 SW1/4, SW1/4 SW1/4 Section 23; all of Section 27; NW1/4 NW1/4 Section 24, all in T.33N., R.36E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SE1/4 Section 15, T.33N., R.36E., M.D.B.&M.¹

Application 46713 was filed on March 9, 1983, by Robert E. Meyer to appropriate 1.11 c.f.s. of water from Potato Patch Spring for mining, milling and domestic purposes within the SE1/4 Section 14; S1/2 Section 15; SE1/4, SE1/4 NE1/4, SE1/4 SW1/4 Section 16; E1/2 Section 21; all of Section 22; N1/2 N1/2, S1/2 NW1/4, SW1/4 NE1/4, N1/2 SW1/4, SW1/4 SW1/4 Section 23; all of Section 27; NW1/4 NW1/4 Section 24, all in T.33N., R.36E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SE1/4 Section 14, T.33N., R.36E., M.D.B.&M.¹

Application 46712 was timely protested by Arthur L. Baker on the following grounds:¹

"This underground source will deny our rights and use for both underground and surface rights. This source drains into Dun Glen Canyon and Creek.

These surface and underground rights held for many years under Application No. 17552, surface water and Application No. 17562 an underground source which will be seriously affected. There has been insufficient water until last winter to provide for the mining operation by Proquip Mining Co. Please deny these applications by Robt. E. Meyer."

Applications 46712 and 46713 were timely protested by Henry D. Ott on the following grounds:¹

¹ Public record in the office of the State Engineer under Applications 46712 and 46713.

"Henry D. Ott had issued to him a Certificate of Appropriation of Water for the use of water from Barber Canyon Creek, dated August 16, 1974, bearing Application No. 25294, Certificate Record No. 8351, Book 26, Page 8351; Henry D. Ott had issued to him a Certificate of Appropriation of Water for the use of water from an underground source dated February 8, 1971, bearing Application No. 24987, Certificate Record No. 7551, Book 24, Page 7551; your Protestant is fearful that should the above application be granted, that it will interfere with the prior rights of your Protestant in the area."

A field investigation was made on August 16, 1984, to attempt to resolve the protests and to gather additional information for the State Engineer.²

Mr. Gerald Harris for Meyer Properties indicated that his company had filed numerous claims for placer mining encompassing the area where the two surface water application points of diversion were located as well as applications for seven additional well site locations.

At the time of the field investigation, Mr. Harris thought his company would need a total of about 2000 gallons per minute for their proposed mining operation.

Upon examination of Butcher Spring, the source of water for Application 46712, it was determined that the discharge of the spring was on the opposite side of a hill that separated the drainage into Dun Glen Canyon. If the flow of the spring, which measured 9 gallons per minute, was sufficiently large, the runoff could eventually reach Dun Glen Creek, some three miles downstream below the points of diversion of the protestant's water rights.

A consulting geologist for the applicant stated that he thought the parallel drainages for the spring and Dun Glen Canyon Creek were separated underground by limestone formations.

An inspection of Potato Patch Spring revealed a very small surface eruption that could barely be considered sufficient for stockwater or for wildlife in the area.

FINDINGS OF FACT

I.

The proposed source of water for Application 46712 is Butcher Springs located on the west slope of the east range above Dun Glen Flat. On August 16, 1984, the flow of the spring measured 9 gallons per minute.²

II.

The proposed source of water for Application 46713 is Potato Patch Spring located on the west slope of the east range above Dun Glen Flat. On August 16, 1984, the amount of water on the surface of the ground was contained in a small grassy area of approximately 15 square feet.²

² Public record in the office of the State Engineer under Applications 46712, 46713 and 46925 through 46931, inclusive.

III.

NRS 533.367 provides the requirement to insure access to wildlife to water it customarily uses. Before a person may obtain a right to the use of the water from a spring or water which has seeped to the surface of the ground, he must insure that wildlife which customarily uses the water will have access to it. Evidence and information available to the State Engineer indicates that the source under Application 46713 is minimally sufficient to provide water for wildlife that frequent the area.²

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting a permit where:

- 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 interest.⁴

III.

The evidence and information available indicates there is surface water available at the source to provide water for mining, milling and domestic use as proposed under Application 46712.

IV.

The evidence and information available does not indicate there is adequate surface water available at the source to provide for mining, milling and domestic use as proposed under Application 46713.

³ NRS 533.325.

⁴ NRS 533.370, subsection 3.

RULING

The protest to Application 46712 is hereby overruled on the grounds that granting said permit will not tend to impair the value of existing rights. A permit will be issued for Application 46712 upon payment of the required statutory permit fees and upon the condition that the permittee must insure that wildlife will have access to such water as is customarily used.

The protest to Application 46713 is hereby upheld and Application 46713 is hereby denied on the grounds that there is insufficient amounts of water available at the source for the proposed use.

Respectfully submitted

A handwritten signature in black ink, appearing to read "Peter G. Morros", written over a horizontal line.

Peter G. Morros
State Engineer

PGM/GC/bl

Dated this 19th day of
March, 1985.