

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 48947)  
FILED TO APPROPRIATE THE PUBLIC)  
WATERS OF BARTLETT CREEK IN VIRGIN)  
VALLEY, HUMBOLDT COUNTY, NEVADA. )

RULING

GENERAL

Application 48947 was filed on March 28, 1985, by James H. Cole to appropriate 1.5 c.f.s. of water from Bartlett Creek for milling purposes within the NE1/4 SW1/4 Section 4, T.41N., R.27E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SW1/4 Section 4, T.41N., R.27E., M.D.B.&M.<sup>1</sup>

Application 48947 was timely protested by Ken H. Earp on the following grounds:<sup>1</sup>

"Doris N. Earp and I own all existing water rights on Bartlett Creek and we use same for irrigation and stock purposes and we DO NOT wish to see any up-stream rights granted."

Application 48947 was timely protested by William A. Molini on the following grounds:<sup>1</sup>

"Bartlett Creek is one of the two aspen-lined perennial streams in the Black Rock Range. This riparian zone is considered to be in relatively good condition and supports an array of fish and wildlife. Rainbow and brook trout inhabit six miles of Bartlett Creek that would be severely impacted by the proposed project. According to the Department's data, the stream supports 79 fish per mile and is actively fished by sportsmen.

Mule deer use this drainage for fawning and summer habitat. Small game species such as chukar, quail, sage grouse and cottontail occur in moderate densities. Hunters heavily utilize this area for camping and recreation during the fall months.

Aerial and ground surveys have documented an active goshawk nest at 6,200 feet elevation on Bartlett Creek for the past several years. This bird receives special management emphasis by the federal land management agencies and the Department of Wildlife."

Both protestants requested said application be denied.

A letter of concern, dated June 12, 1985, was also received from Frank C. Shields, District Manager, Winnemucca District Office, Bureau of Land Management, concerning Application 48947.<sup>1</sup> He states that the proposed diversion would dewater Bartlett Creek most of each year causing loss of riparian vegetation and stream bank stabilization downstream. Also of interest, he notes that his office has not received any notice of intent to operate a mill in the vicinity of Bartlett Creek.

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<sup>1</sup> Public record in the office of the State Engineer under Application 48947.

A formal field investigation was conducted on September 4, 1985, for the purpose of gathering additional information and to attempt to resolve the protests concerning Application 48947.<sup>1</sup>

The applicant stated that the mined material would be combined with water in a slurry - then piped about a quarter of a mile to the millsite where minerals would be extracted by harmonic or sonic waves. The water then would be put into a 2.0 acre-foot tailings pond with the excess water returned to the stream. Mr. Cole admitted there would be loss due to seepage and evaporation, however, it would be minimal.

The protestants reiterated their written protests and made it known that the proposed use of the water was definitely consumptive.

Both of the protestants were unwilling to withdraw their respective protests.

### FINDINGS OF FACT

#### I.

Existing certificated water rights and claims of vested right of record for Bartlett Creek, located in Virgin Valley, Humboldt County, are as follows:

1). Claim #02105 filed by W.A. Johnstone on August 12, 1927, for sufficient stockwater from Bartlett Peak Spring to water 100 head of cattle or 1500 sheep.<sup>2</sup> A priority of pre 1980 is indicated. The present owners of record are Kenneth H. and Doris N. Earp.

2). Claim #02241 filed by W.A. Johnstone on June 3, 1931, for irrigation of 256.02 acres of land from the Bartlett Stream system and its tributaries with a priority of prior to 1876.<sup>3</sup> Stockwater and domestic use was also claimed. The present owners of record are Kenneth H. and Doris N. Earp.

3). Permit 1692, Certificate 253, was issued for 1.6 c.f.s. of water for irrigation of 160 acres of land with a priority of May 17, 1910.<sup>4</sup> The present owners of record are Kenneth H. and Doris N. Earp.

4). Permit 11395, Certificate 3087, was issued for 0.03125 c.f.s. of water for stockwatering purposes.<sup>5</sup> The present owners of record are Kenneth H. and Doris N. Earp.

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<sup>2</sup> Public record in the office of the State Engineer under Proof of Appropriation 02105.

<sup>3</sup> Public record in the office of the State Engineer under Proof of Appropriation 02241.

<sup>4</sup> Public record in the office of the State Engineer under Permit 1692, Certificate 253.

<sup>5</sup> Public record in the office of the State Engineer under Permit 11395, Certificate 3087.

II.

The proposed point of diversion of Application 48947 is upstream from the diversion points of all existing claims of vested right and certificated rights of record for Bartlett Creek.

III.

The proposed manner of use (milling) of Application 48947 requires a consumptive use of water which may range from 1/2 to 8 tons of water per ton of ore.

IV.

There are at least two claims of vested use of water to be determined through the adjudication procedure established by Nevada Revised Statutes.

**CONCLUSIONS**

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.<sup>6</sup>

II.

The State Engineer is prohibited by law<sup>7</sup> from granting a permit under an application to appropriate the public waters where:

- A. There is no unappropriated water at 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.

III.

Approval of Application 48947 would allow diversion of water upstream from all existing rights of record and claims of vested right on Bartlett Creek and would cause a substantial decrease at the source of the stream.

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<sup>6</sup> NRS 533.325.

<sup>7</sup> NRS 533.370(3).

RULING

Application 48947 is hereby denied on the grounds that approval of said application would conflict with and impair the value of existing rights on the source and would be detrimental to the public interest.

Respectfully submitted,



PETER G. MORROS  
State Engineer

PGM/GC/bl

Dated this 8th day of  
November, 1985.