

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 49583)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE IN)
THE ELDORADO GROUND WATER BASIN,)
CLARK COUNTY, NEVADA.)

RULING

GENERAL

Application 49583 was filed on December 16, 1985, by E. J. Ades to appropriate 1.0 c.f.s. of water from an underground source for mining and milling purposes within portions of the NE1/4 Section 9, T.25S., R.63E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NE1/4 Section 9, T.25S., R.63E., M.D.B.&M.¹

FINDINGS OF FACT

I.

On August 29, 1986, a Decision dated January 22, 1986, addressed to Ely J. Ades was received from the Bureau of Land Management Branch of Lands and Minerals Operations.¹ The Decision stated that applicant's unpatented mining claims identified by the following serial numbers:

NAME OF CLAIM

N MC NUMBER

Classic Millsite # 1-8
Classic # 1-18

N MC 354528-354535
N MC 354536-354553

and located within Section 9, T.25S., R.63E., M.D.B.&M., were declared null and void ab initio under the provisions of a Secretary's Order dated April 7, 1958, issued by virtue of the authority and direction contained in Section 2 of the Act of March 6, 1958 (72 Stat. 31).

The order provided for the segregation and withdrawal of specified lands within Eldorado Valley from all forms of entry under the public land laws of the United States. The lands were closed to the location of mining claims at the time the subject claims were located and are still closed as of this date.

The Decision also stated that applicant had the right of appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations in 43 CFR Part 4.400. According to the records of the Bureau of Land Management, the applicant did not file an appeal and, therefore, the above referenced decision became final.

¹ Public record in the office of the State Engineer.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.²

II.

The State Engineer is prohibited by law³ 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.

Beneficial use shall be the basis, the measure and the limit of the right to the use of water.⁴

IV.

The unpatented mining claims described under I of Findings were declared null and void ab initio by the Bureau of Land Management, therefore, the applicant does not own or control the land described under the place of use under Application 49583 and cannot demonstrate the ability and the necessity to divert water for a beneficial use.

V.

To grant an application to appropriate the public waters on land the applicant does not own or control or where the applicant cannot demonstrate the ability and the necessity to divert water for a beneficial use, would not be in the public interest.

² NRS Chapters 533 and 534.

³ NRS 533.370(3).

⁴ NRS 533.035.

RULING

Application 49583 is hereby denied on the grounds that to grant the application to appropriate the public waters on land that the applicant does not own or control or cannot demonstrate the ability and necessity to divert water for a beneficial use would not be in the public interest.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/SHF/bl

Dated this 14th day of
July, 1987.