

IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA

3716

IN THE MATTER OF APPLICATION 51908)
FILED TO APPROPRIATE THE WATER OF)
AN UNNAMED SPRING IN THE LOVELOCK)
VALLEY - OREANA SUBAREA GROUND)
WATER BASIN, PERSHING COUNTY,)
NEVADA.)

RULING

GENERAL

I.

Application 51908 was filed on March 8, 1988, by Raven Mining to appropriate 1.0 c.f.s. of water from an unnamed spring for mining and milling and domestic purposes within the NE1/4 SE1/4, Section 18, T.28N., R.33E., M.D.B.&M. The proposed point of diversion is described as being within the SW1/4 SW1/4, Section 17, T.28N., R.33E., M.D.B.&M.¹

II.

Application 51908 was timely protested on May 9, 1988 by Buck & Charley Mines Corp. on the following grounds:

"Buck & Charley Mines Corp. and its predecessors has had continuous use for over fifty years of the waters applied for the same are the only source of potable water for the watchman's and miners' cabins at protestor's mine in Rochester Canyon.

The Stream from the spring runs through the legal mining claims of the protestor and arises on one of such claims."²

III.

Application 51908 was also timely protested on May 19, 1988 by Coeur Explorations, Inc. on the following grounds:

¹ State's Exhibit No. 2.

² State's Exhibit No. 6.

"The proposed source of supply is located upon an unpatented mining claim owned by protestant. Protestant has not given permission to the applicant to go upon the unpatented mining claim. Protestant will be damaged in its attempt to develop the unpatented mining claim if the applicant is granted the permit. The granting of the permit under these conditions would be detrimental to the public interest. Additionally, protestant is the owner of ground water rights duly granted by the State Engineer. It is quite conceivable that there exists a direct hydraulic connection between the spring and the source of ground water."³

IV.

Application 51908 was also timely protested on May 31, 1988 by Wilma F. McCullough on the following grounds:

"The proposed diversion of water in the quantity described and from the point of diversion described in application 51908 will undoubtedly effect the underground aquifer which is the source of water granted under my permit 46017. Diversion of water from a higher elevation of this aquifer will most certainly reduce available water at a lower elevation in the aquifer; and will place my water right in jeopardy and will be a future source of dispute between the two rights."⁴

V.

All the protestants requested that the application be denied.⁵

³ State's Exhibit No. 5

⁴ State's Exhibit No. 4

FINDING OF FACT

I.

After proper notice was given to all interested parties, a public administrative hearing was held before representatives of the State Engineer, on September 15, 1988 in Lovelock, Nevada.⁶ Evidence and testimony on behalf of the applicant and the protestants were introduced into the record at the public hearing.⁷

II.

The records of the State Engineer show no valid water rights existing on the spring in question.⁸

III.

Application 2580 upon which Buck & Charley Mine Corp. rests its claim to the waters of the spring was cancelled on April 9, 1917, due to failure of the applicant to comply with the provisions of the permit.⁹

IV.

Steve Berke, representing Coeur Explorations, Inc. introduced testimony and evidence indicating that the point of diversion of Application 51908 was within the legal boundaries of Coeur's unpatented lode mining claim H055.¹⁰

⁵ State's Exhibits No. 4, 5, 6.

⁶ State's Exhibit No. 1, Transcript pg. 3.

⁷ See Transcript of Public Administrative Hearing, public record in the Office of the State Engineer.

⁸ Records of the Office of the State Engineer.

⁹ Records of the Office of the State Engineer.

¹⁰ Transcript, pgs. 10, 11, Protestant's Exhibit No. 7.

V.

Permit 46017 was completely abrogated by Permit 50161, which changed the point of diversion to an underground source within the SE1/4 SE1/4, Section 13, T.28N., R.33E.¹¹

VI.

The State Engineer finds that no substantial evidence or testimony introduced during the course of the hearing supports the contention that the appropriation of the spring water would impair nearby existing underground rights.¹²

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.¹³

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:¹⁴

1. There is no unappropriated water at the proposed source.
2. The proposed use conflicts with existing rights.
3. The proposed use threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that there is water available for appropriation in the source described under Application 51908.

¹¹ Records of the Office of the State Engineer.

¹² Transcript pgs. 7-17.

¹³ NRS 533.325

¹⁴ NRS 533.370

IV.

The State Engineer concludes that the grounds of Buck & Charley Mines Corp.'s and protest are without merit since the records of the State Engineer's office reflect no existing water rights on the source, subsequently no impairment of existing rights occur.

V.

Based on the record of evidence and testimony on behalf of Wilma F. McCullough and Coeur Explorations, Inc. the State Engineer concludes that the appropriation of spring water represented by Application 51908 would not impair their nearby existing underground right.

RULING

The protests to the granting of Application 51908 are hereby overruled and Application 51908 is hereby approved subject to prior rights and payment of the statutory permit fees. Approval of Application 51908 is not implied to grant any rights of ingress or egress on private, public or corporate lands.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MB/pm

Dated this 30th day of
May, 1990.

FINDINGS OF FACT

I.

The applicant was notified by certified mail on July 16, 1984 and on August 28, 1984, to submit additional information to the State Engineer's office regarding consumptive use, specifically, requesting data concerning water conservation measures and amount of water to be recycled. The return receipts were received from the addressee on July 24, 1984 and September 5, 1984, respectively.² To date the information requested has not been received from the applicant.³

II.

The applicant and agent were notified by certified mail on February 21, 1990, to submit the additional information requested by the State Engineer's office. The return receipt was received from both addressees on February 27 and March 1, 1990 respectively.⁴ The letter assigned a 30 day time limit to file the required information or request a postponement of further action as provided by NRS 533.370, subsection 2. To date the information requested has not been received from the applicant or agent.³

CONCLUSIONS

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.⁵

² See Certified Mail, return Receipt No. P 616 538 190

³ A check of the record of the State Engineer indicates that no information has been received.

⁴ See Certified Mail, return Receipt No's. P 560 420 200 and P 560 420 199.

⁵ NRS Chapters 533 and 534.

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.⁶

III.

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

- 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.

IV.

The applicant has failed to submit the information requested by the State Engineer's office. Therefore sufficient information is not available to the State Engineer to guard the public interest properly.

RULING

Applications 43527, 43528 and 43529 are hereby denied on the grounds that the applicant has not submitted the information requested by the State Engineer's office and therefore the granting of said applications without the additional information requested would not be in the public interest.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/DJL/pm

Dated this 31st day of

May, 1990

⁶ NRS 533.375.

⁷ NRS 533.370(3).