

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

IN THE MATTER OF APPLICATIONS 39277,)
41389, 41554 and 49928 FILED TO)
APPROPRIATE THE WATERS OF PIUTE CREEK)
AND APPLICATION 42755 FILED TO)
APPROPRIATE THE WATERS FROM AN UNNAMED)
SPRING ALL LOCATED WITHIN WARM SPRINGS)
VALLEY, WASHOE COUNTY, NEVADA.)

RULING

4099

GENERAL

I.

Application 49928 was filed on June 17, 1986, by Lewis H. and Nora Polizzi to appropriate 0.00323 c.f.s. of water from Piute Creek for domestic purposes within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17, located within T.22N., R.22E., M.D.B.&M. The point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 17, T.22N., R.22E., M.D.B.&M.¹

Application 39277 was filed on October 3, 1979, by C.R. Miller and Denise Miller to appropriate 1.0 c.f.s. of water from Piute Creek to irrigate 67 acres of land within a portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 18, T.22N., R.22E., M.D.B.&M. The point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 17, T.22N., R.22E., M.D.B.&M.²

Application 39277 was timely protested by Daniel C. Jones, Rita and Paul Ryan, Donna B. and Dave Wendland, James T. Barnett, J.R. Busby, Raymond F. Warren, Bill G. Grant, Alan E. Hubbard, Lewis H. Polizzi, MCO Properties, Richard W. Lewis, Susan Anne Deming, Evelyn K. Fitch and Richard F. Miller for one or more of the following reasons¹:

- 1) Daniel C. Jones: "We purchased our property mainly because it was one of the few parcels with a creek running through as we felt the willows growing by our creek enhanced not only the landscape of our acreage but also increased its monetary worth.

¹ Public record in the Office of the State Engineer.

² Public information in the office of the State Engineer under Application 39277.

Without this creek, the existing landscape would die."

- 2) Rita and Paul Ryan: "We feel that diverting Piute Creek would not only harm the ecology, but diminish the value of our property. It would change the course of the creek away from our property. This would have an effect of drying up the land, destroying the trees, and making any agricultural development impossible."
- 3) Donna B. and Dave Wendland: "To give all or any water to Mr. Miller would be wrong. Trespassing(sic) on several parcels of ground. He wants to divert water to another basin - would ruin natural terrain dry up 10 to 15 other parcels of land.

We dont(sic) want all the water and Application 41389 are already ranching in Valley. He also is breaking restrictions under which he signed and purchased property. Also think he's been in violation of Application filing. Rules attached."

- 4) James T. Barnett: "The diversion of Piutte(sic) Creek from its original shed area would destroy the natural green belt that exists on my property and the other parcels adjoining(sic) the creek. It is my contention that this action would render my parcel worthless for any anticipated agriculture ventures. The water thats(sic) diverted from the creek should be returned so that others down stream can use it also."
- 5) J.R. Busby: "I feel that diverting the creek from its normal path would hurt my property and the wildlife that use the waters on my property would disappear. I feel that it would diminish the value of my property and the enjoyment that I receive from my property."
- 6) Raymond F. Warren: "I believe that diverting Piute Creek from its natural streambed would hurt the wildlife in the area & destroy the beautiful trees & vegetation that now flourish in Piute Creek Canyon. I feel that I should have the right to the use of some of the waters of Piute Creek that flow across my property for my own domestic use in the near future. Thats(sic) why I bought my property!"
- 7) Bill G. Grant: "Proposed use would alter the natural flow and ecology of an established waterway

and result in water being diverted away from its natural channel. The proposed diversion could adversely affect my right to the use of water from Piute Creek on my property, located in the NE¼ Sec 16, T.22N., R.22E. The existing pipes, ditches referred to under item 8 of the Application #39277 do not exist."

- 8) Alan E. Hubbard: "It would be environmentally unsound to divert any surface water across the back side of my property as outlined in the application and map submitted.

This particular piece of land (which is recorded as Parcel 18-2-2-4 as shown on Record of Survey Map filed in the office of the Washoe County Recorder, under file No. 439204 and the Division of Land Map filed under File No. 439214), is currently being investigated by the State Department of Environmental(sic) Health along with the Washoe County Health Department because it was used as a burial and dump site by the Rocketdyne Corporation during the period the land was in use by them.

There have been many empty and burned chemical and explosive containers found on the surface of the land. And in a statement from an official of the Rocketdyne Corporation, there is a considerable amount of debris buried under the surface of the ground. From visual observation, it can be seen that the topographic structure has been changed considerably and the natural drainage that existed years ago is no longer there. This was done approximately 10 to 12 years ago.

We have been warned by the Washoe County Health Department to not do any digging in this area or disturb the surface of the land as this would expose any contaminates that might exist and create some now, unforeseen(sic) health hazards.

If this application is approved and the land re-contured(sic) to the original drainage, the ditch would go directly through this area and would be less then 50 feet from my water well. It would also go through the access road to my house in two different locations.

In view of this I will not willingly allow anyone to disturb this area, either by digging, or diverting water across it because of the very good possibility of exposing some of the contaminates that could be washed downstream many miles, onto

many other pieces of property resulting in countless lawsuits."

- 9) Lewis H. Polizzi: "Said application proposes the diversion of the waters of Piute Creek to another drainage which would not only alter the natural course of the stream, but would eliminate the creek on my property altogether."
- 10) MCO Properties, Inc.: "Protestant owns all the water rights in Piaute(sic) Creek. Further, it has been determined that there is a limited amount of recharge in the Warm Springs Basin, all of which has been appropriated. The water rights are currently being used."
- 11) Richard W. Lewis, Susan Anne Deming, Evelyn K. Fitch: "It would be environmentally unsound to divert any surface water across the back side of the property belong(sic) to Richard W. Lewis and Evelyn K. Fitch as outlined in the application and map submitted. This parcel of land known as Palomino Valley Parcel 17-2-2-5 as shown on record of survey map under File #50592 and Division of Land Map under File #50594 both of Washoe County and another adjoining parcel are currently being investigated by the state(sic) Department of Environmental Health along with the Washoe County Health Department because it was used as a burial and dump site during the period the land was in use by Rocketdyne Corporation. We have been instructed by the Washoe County Health Department not to do any digging in this area or disturb the surface of the land as this could expose any contaminates that might exist and perhaps create some now, unseen health hazard. In view of this we will not willingly allow anyone to divert water across this area, because of the danger of exposing contaminates."
- 12) Richard F. Miller: "Highly toxic chemicals and compounds(sic) have been indiscriminately(sic) buried in the proposed drainage ditch and adjacent areas by the Rockadyne(sic) Corp, before Federal laws forbid the disposale(sic) of toxic wastes haphazardly in shallow graves. As long as any possibility exists of these chemicals soaking into the earth and rock strata or entering the water table, either in the immediate future or generations from now, the Piute Creek should not be allowed to be diverted over the proposed area."

Application 41389 was filed on May 19, 1980, by Dave and Donna Wendland to appropriate 1.0 c.f.s. of water from Piute Creek to irrigate 50 acres of land within a portion of the S $\frac{1}{2}$ NE $\frac{1}{4}$ and a portion of the SE $\frac{1}{4}$ Section 17, located within T.22N., R.22E., M.D.B.&M. The point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 17, T.22N., R.22E., M.D.B.&M.¹

Application 41389 was timely protested by Clel R. Miller on the following grounds:

My prior Application 39277 is on the same source limited supply of water available in Piute Creek and don't feel there is sufficient water for both applications bearly(sic) enough for mine.

Wherefore protestant prays that the application be denied or at least issued subject to existing rights and that the use of water herein claimed by protestant be confirmed and that an order be entered establishing said right and for such other relief as the State Engineer deems just and proper.³

Application 41554 was filed on June 20, 1980, by James T. Barnett to appropriate 1.0 c.f.s. of water from Piute Creek to irrigate 50 acres of land within a portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$ Section 18, T.22N., R.22E., M.D.B.&M. The point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 18, T.22N., R.22E., M.D.B.&M.⁴

Application 41554 was timely protested by MCO Properties on the following grounds:

Protestant owns all the water rights in Piaute(sic) Creek. Further, it has been determined that there is a limited amount of recharge in the Warm Springs Basin, all of which has been appropriated.

Therefore the protestant requests that the application be denied and that an order be entered for such relief as the State Engineer deems just and proper.

³ Public information in the Office of the State Engineer under Application 41389.

⁴ Public information in the Office of the State Engineer under Application 41554.

Application 42755 was filed on October 30, 1980, by Dave and Donna Wendland to appropriate 1.0 c.f.s. of water from an unnamed spring for stockwatering and domestic purposes within portions of the SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 17, T.22N., R.22E., M.D.B.&M. The point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 16, T.22N., R.22E., M.D.B.&M.⁵

Certificate No. 506 was issued on March 1, 1921, under Permit 3971 with a priority date of May 11, 1916, to Charles W. Young and is currently assigned to Monte Cristo Ranch, a partnership. The certificate was issued to divert 0.0948 c.f.s. from Piute Creek to irrigate 9.48 acres of land located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 18, T.22N., R.22E. M.D.B.&M. The point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 17, T.22N., R.22E., M.D.B.&M.¹

Certificate No. 1600 was issued on December 31, 1929, under Permit 6627 with a priority date of February 6, 1922, to Leona Blundell Caraway and portions are currently assigned to Monte Cristo Ranch, a partnership and Henry B. Walker and Arlene Walker. The certificate was issued to divert 0.2153 c.f.s. from Piute Creek to irrigate 21.53 acres of land located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 18, T.22N., R.22E. M.D.B.&M. The point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 17, T.22N., R.22E., M.D.B.&M.¹

Proof of Appropriation No. 02489 for the waters of Piute Creek was filed on August 24, 1961, by W. Dalton LaRue, Sr. and Juanita S. LaRue and is currently assigned to Monte Cristo Ranch, a partnership, claiming a priority date of 1896 for stockwatering of 700 cattle and 200 horses from January 1 to December 31 of each year. The point of diversion is described as a springs located near the center of Section 14, T.22N., R.22E., M.D.B.&M. The place of use is described as the stream channel located within Sections 14, 15, 16, 17 and 18 all located within T.22N., R.22E., M.D.B.&M.¹

⁵ Public information in the office of the State Engineer under Application 42755.

FINDINGS OF FACT

I.

By field investigation conducted by The Office of the State Engineer on May 27, 1988, flow in Piute Creek was measured at 18 gallons per minute (gpm) using a 90° V-Notch Weir at a site upstream from the proposed point of diversion under Application 41389. Flow diminished rapidly below a dam/stream crossing on the Dave and Donna Wendland property. The channel was completely dry less than one half mile below the measurement site.

II.

Existing rights under Permit 3971, Certificate 506, and Permit 6627, Certificate 1600, on Piute Creek account for over 139 g.p.m. of diversion from said stream.

III.

By field investigation conducted by The Office of the State Engineer on May 27, 1988, no measurable flow was found from the unnamed spring described under Application 42775. In fact, the spring was completely dry.

IV.

Providing water for wildlife has been declared a beneficial use.⁶

V.

Access by wildlife to water from a spring or water that has seeped to the surface of the ground is required by statute.⁷

CONCLUSIONS

I.

The State Engineer has jurisdiction in this matter under the provisions of NRS 533.325 and NRS 533.435.

⁶ State v. State Engineer, 104 Nev. 709, 706 P. 2d 263 (1988).

⁷ NRS 533.367.

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁸

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use or change conflicts with existing rights, or
- C. The proposed use or change threatens to prove detrimental to the public interest.

III.

The State Engineer determines that there is no unappropriated water available from Piute Creek and that any additional appropriations would be detrimental to the public interest.

IV.

An adequate flow does not exist at the unnamed spring described under Application 42775 to support a stockwater permit and maintain a sufficient quantity of water for wildlife which have traditionally utilized this source.

V.

The State Engineer determines that there is no water available from the unnamed spring described under Application 42775 and sufficient water would not be available for wildlife at the source if developed for stockwatering purposes.⁹

RULING

The grounds of the protests under Applications 39277 and 41554 pertaining to Piute Creek being fully appropriated have been fully considered by the State Engineer. Therefore, Applications 39277, 41389, 41554 and 49928 are herewith denied on the grounds that there is no unappropriated water at the proposed source, and that they would conflict with existing rights, and it would be detrimental to the public interest to grant additional rights on

⁸ NRS 533.370.

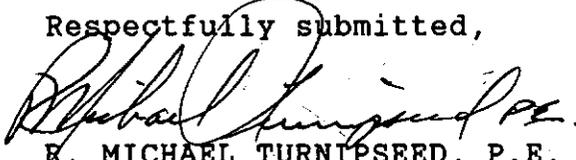
⁹ NRS 533.367.

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Piute Creek. No ruling is made on the grounds of the other protests.

Application 42755 is herewith denied on the grounds that it would not be in the public interest to grant a permit on sources of water where there would not be sufficient water flow to ensure the customary use by wildlife as required under NRS 533.367.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SW/pm

Dated this 23rd day of
March, 1994.