

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

IN THE MATTER OF APPLICATIONS 46923)
AND 46924 FILED TO APPROPRIATE THE)
WATERS OF VARIOUS SURFACE SOURCES)
WITHIN THE SPRING VALLEY GROUNDWATER)
BASIN (184), WHITE PINE COUNTY, NEVADA.)

RULING

4384

GENERAL

I.

Application 46923 was filed on May 17, 1983, by Glenn Wade Taylor, to appropriate 1.0 cubic foot per second of water from Ohio Spring #2 and #3 for mining and domestic purposes. The point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, T.14N., R.68E., M.D.B.&M.¹

II.

Application 46924 was filed on May 17, 1983, by Glenn Wade Taylor, to appropriate 1.0 cubic foot per second of water from Cold Spring and Ohio Spring #1 for mining and domestic purposes. The point of diversion is described as being located below the confluence of both springs which is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, T.14N., R.68E., M.D.B.&M.²

III.

The place of use under both applications is a group of unpatented mining claims, more specifically the Ohio Springs #1 through #9, the Cold Springs #1 through #5 and the Webe claims #1 through #11. These unpatented placer claims are located within portions of Sections 29, 30, 31 and 32, T.14N., R.68E., M.D.B.&M. and Sections 23, 25, 26 and 35, T.14N., R.67E., M.D.B.&M.^{1,2}

¹ File No. 46923, official records in the Office of the State Engineer.

² File No. 46924, official records in the Office of the State Engineer.

IV.

Applications 46923 and 46924 were timely protested on September 13, 1983, by Robert L. Harbecke for the following reason:^{1,2}

The granting of these applications would conflict and interfere with existing prior water rights in this area.

FINDINGS OF FACT

I.

Unpatented placer claims and mill sites located on federal land must be maintained in accordance with federal and state requirements. Federal requirements are prescribed by the Mining Law of 1872 and the Federal Land Policy Management Act of 1976 (FLPMA). The FLPMA outlines the federal filing requirements for unpatented mining claims. Through the federal assessment year ending September 1, 1991, the owner of any unpatented mining claim was required to file with the county and with the Bureau of Land Management (BLM) a notice of intent to hold, an affidavit of assessment work or a detailed report of geological, geophysical or geochemical work. The failure to timely file the appropriate instrument in the county and with the BLM as required by FLPMA results in a conclusive presumption that the unpatented claim has been abandoned.³

The State Engineer finds that the applicant, Glenn Wade Taylor, failed to file the required Affidavit of Annual Assessment Work for the Ohio Springs claims for the assessment year ending September 1, 1982. On November 2, 1982, the Bureau of Land Management declared these unpatented placer claims abandoned and void. The Webe #1 through #10 claim group was declared abandoned and void on February 9, 1989, for failure to file the annual

³ 43 U.S.C. Section 1744(c) (1988); see also Ruth Irene Hackathorn 94 IBLA 194, 195 GFS (MIN) 74 (1986).

assessment affidavit for the 1984 assessment year.⁴ No mention is made of the Cold Springs claim group within the BLM mining records, which indicates that a valid mineral location was never filed with the BLM.

II.

An application to appropriate is filed with the intent to place water to a beneficial use within a specific place of use. Applications 46293 and 46294 were filed to appropriate surface water for mining and domestic purposes within a group of unpatented placer mining claims. During the 1980's, these mining claims were declared abandoned and void by the BLM in accordance with Federal Mining Law. The State Engineer finds that the abandonment of the place of use precludes any possibility of placing the water under the subject applications to beneficial use.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁶

- 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.

⁴ Bureau of Land Management, U.S. Dept. of Interior Geographic Claim Index, May 1996, records in the Office of the BLM, Reno, Nevada.

⁵ NRS Chapter 533.

⁶ NRS 533.370(3).

III.

Applications 46923 and 46924 request an appropriation of surface water for mining and domestic purposes within a place of use which has been abandoned for mining use in excess of six years. The State Engineer concludes that it would threaten to prove detrimental to the public interest to grant an application to appropriate water where there is no possibility of placing the water to beneficial use.

RULING

Applications 46923 and 46924 are hereby denied on the grounds that to grant applications for mining purposes on lands which the applicant cannot demonstrate the ability to place the water to beneficial use would threaten to prove detrimental to the public interest. No ruling is made as to the merits of the protest.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/ab

Dated this 31st day of
July, 1996.