

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

IN THE MATTER OF APPLICATIONS 35203 )  
AND 35384 FILED TO APPROPRIATE THE )  
WATERS OF AN UNDERGROUND SOURCE )  
WITHIN THE GRANITE SPRINGS VALLEY )  
GROUNDWATER BASIN (078) PERSHING )  
COUNTY, NEVADA. )

RULING

# 4528

GENERAL

I.

Application 35203 was filed on March 20, 1978, by Lyle E. Campbell and Diane M. Campbell to appropriate 6 cubic feet per second (cfs) from an underground source for irrigation and domestic purposes within Section 12, T.30N., R.29E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of said Section 12.<sup>1</sup>

II.

Application 35384 was filed on May 4, 1978, by Lyle E. and Diane M. Campbell to appropriate 1 cfs of underground water from a point of diversion identical to that described under Application 35203. The proposed manner and place of use is for mining, milling and domestic purposes within a portion of the SE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 12, T.30N., R.29E., M.D.B.&M.<sup>2</sup>

III.

Application 35203 was timely protested by the U.S. Government, Bureau of Land Management for the following reason:<sup>1</sup>

Long Walk Well and surrounding lands are in ownership of the U.S. Government. The well is presently being used to water cattle licensed by the Bureau of Land Management within the Seven Troughs Allotment. Initial drilling in 1969 and subsequent maintenance has cost \$9,195.27. The applicant has no authorization to use this development nor surrounding lands and therefore cannot make beneficial use of the water for irrigation or domestic purposes without being in violation of 43 CFR 2801.1-4 (unauthorized occupancy).

<sup>1</sup> File No. 35203, official records in the office of the State Engineer.

<sup>2</sup> File No. 35384, official records in the office of the State Engineer.

IV.

Application 35384 was timely protested by the U.S. Government, Bureau of Land Management for the following reason:<sup>2</sup>

Long Walk Well and surrounding lands are in ownership of the U.S. Government and administered by the Bureau of Land Management. The well is presently being used to water cattle licensed by the Bureau of Land Management within the Seven Troughs Allotment. Initial drilling in 1969 and subsequent maintenance has cost \$9,195.27. The applicants have filed four associant placer claims on the lands surrounding the well but as yet have not been able to provide proof of discovery. Bureau of Land Management geologists conducted a validity examination of the claim on 6-19-78 and found no evidence of a valuable mineral discovery in the four claims. The applicants were notified prior to the validity examination and offered a chance to present their discovery but chose not to attend. The claimants will be in violation of 43 CFR 2801.1-4 (unauthorized occupancy) unless they can prove beneficial use of other than Long Walk Well water through development of valid mining claims. In any case the applicants have no authorization to use Long Walk Well for mining, milling, and domestic purposes.

FINDINGS OF FACT

I.

The place of use described under Application 35203 consists of 640 acres of land within Section 12, T.30N., R.29E., M.D.B.&M. The records of the Bureau of Land Management indicate that this parcel of land is under the control of the Federal Government. Application 35203 was filed under the provisions of Nevada Revised Statutes Chapter 326 to support a possessory claim action, which was intended to remove control of the land from the Federal Government and ultimately transfer it to the applicants. The Nevada Division of State Lands is responsible for the administration of the provisions found under NRS Chapter 326. A review of Chapter 326 specific to the Campbell's possessory claim was made by Addison A. Millard, Administrator of the Nevada Division of Land in 1978. By correspondence dated April 24, 1978, Mr. Millard advised the Campbell's that it would "be inappropriate and inapplicable" for them to file a possessory claim with the Division of State Lands for land within the public domain.<sup>1</sup> The

State Engineer finds that the control of the land which represents the place of use under Application 35203 remains with the Federal Government, more specifically the Bureau of Land Management.

II.

An application to appropriate is filed with the intent to place water to a beneficial use within a specific place of use. Application 35203 was filed to appropriate water for irrigation purposes within a parcel of land which is currently controlled by the Bureau of Land Management. The applicant's attempt to gain title to this land through a possessory claim was deemed inappropriate and inapplicable by the proper State agency. There is no additional information available within the office of the State Engineer to indicate that the applicants were successful in transferring control of the place of use from the Federal Government to themselves. The State Engineer finds that the applicant's lack of control over the place of use described under Permit 35203 precludes the possibility of their placing the water to beneficial use.

III.

Application 35384 was filed to appropriate underground water for mining, milling and domestic purposes within the L and D unpatented mill site.<sup>2</sup> Unpatented 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 an unpatented mining claim. 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.<sup>3</sup> The claimants failed to file the required Notice of Intent to Hold for the L and D mill site claim for the assessment year ending September 1, 1982. On April 28, 1986, the BLM declared the L and D millsite claim abandoned and void.<sup>4</sup> The State Engineer finds that the place of use described under Application 35384 has been declared abandoned by the proper governing federal agency.

IV.

An application to appropriate is filed with the intent to place water to a beneficial use within a specific place of use. Application 35384 was filed to appropriate surface water for mining, milling and domestic purposes within the L and D unpatented millsite claim. During the 1980's, this millsite claim was 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 application to beneficial use.

CONCLUSIONS

I.

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

II.

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

- A. there is no unappropriated water at the proposed source;

---

<sup>3</sup> 43 U.S.C. Section 1744 (c) (1988); see also Ruth Irene Hackathorn 94 IBLA 194, 195 GFS (MIN) 7.4 (1986).

<sup>4</sup> Bureau of Land Management, U.S. Dept. of Interior Geographic Claim Index, May 1996, records in the office of the BLM, Reno, Nevada.

<sup>5</sup> NRS Chapters 533 and 534.

<sup>6</sup> NRS 533.370(3).

- B. the proposed use conflicts with existing rights, or
- C. the proposed use threatens to prove detrimental to the public interest.

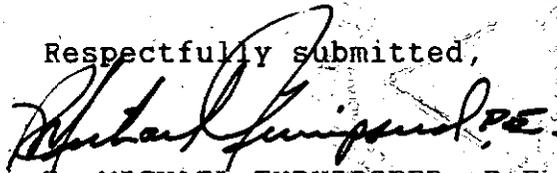
III.

Applications 35203 and 35384 request an appropriation of water for irrigation, milling, mining and domestic purposes within a place of use which is not controlled by the applicants. 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 35203 and 35384 are hereby denied on the grounds that to grant applications 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 3rd day of  
June, 1997.