

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

IN THE MATTER OF APPLICATIONS 38888 AND)
41452 FILED TO APPROPRIATE THE PUBLIC)
WATERS OF DRY GULCH STREAM AND JACKS,)
SPRING, RESPECTIVELY, WITHIN THE SPRING)
VALLEY GROUNDWATER BASIN (184), WHITE)
PINE COUNTY, NEVADA.)

RULING

4693

GENERAL

I.

Application 38888 was filed on August 30, 1979, by Gregory J. Chachas to appropriate 10 cubic feet per second (cfs) of water from Dry Gulch Stream for mining, milling, and domestic purposes within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 19, and the W $\frac{1}{2}$ of Section 18, both in T.14N., R.68E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 19.¹

II.

Application 41452 was filed on May 30, 1980, by Gregory J. Chachas to appropriate 10 cfs of water from Jacks Spring for mining, milling, and domestic purposes within the NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 18, T.14N., R.68E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T.14N., R.68E., M.D.B.&M.²

¹ File No. 38888, official records in the office of the State Engineer.

² File No. 41452, official records in the office of the State Engineer.

III.

Information contained within the remarks section of both applications indicates that they were filed to appropriate water which would be available during the spring snowmelt. Both applications also state that the period of use would be from March 1 to November 1 of each year.^{1,2}

FINDINGS OF FACT

I.

Application 38888 was timely protested by Gladys Peterson on the following grounds:

That it would impair and conflict with the value of existing rights; that it would be against public policy to grant said application, and contrary to statute; that the granting of said application would interfere with the customary use of Protestant's existing water rights and mining claims.¹

By letter dated January 16, 1998, the protestant was requested by the office of the State Engineer to provide evidence of any continued interest that she may have in pursuing her protest to Application 38888. The protestant was also cautioned that a failure to provide such evidence within a thirty-day time period from the date of the letter would represent a lack of interest in this matter and result in her protest being dismissed. The January 16, 1998, letter was returned to the office of the State Engineer by the U.S. Postal Service stamped "Attempted-Not Known".¹ It has been a long established policy within the office of the State Engineer that it is the public's responsibility to inform said office of any changes in the addresses of interested parties and/or owners of record as they relate to specific water rights files. The State Engineer finds that the protestant was correctly notified of the need to provide

evidence of a continued interest in her protest, but has failed to do so, therefore, Gladys Peterson's protest to Application 38888 is dismissed.

II.

Application 41452 requests an appropriation of water from Jacks Spring whose natural drainage intercepts Dry Gulch at a point located within the NW¼ NW¼ of Section 18, T.14N., R.68E., M.D.B.&M.³ The State Engineer finds that the waters of Jacks Spring are tributary to those found within Dry Gulch.

III.

Both Dry Gulch and Jacks Spring are located within a common drainage which is positioned on the west flank of the Snake Range, immediately east of the historic mining camp of Osceola.³ For many years, the springs and streams found within this drainage have been captured and utilized to develop the extensive placer gold deposits of the Osceola Mining District. This traditional use of the waters of Dry Gulch and Jacks Spring is evidenced by several certificated water rights and a single claim of vested right which were filed with the office of the State Engineer to appropriate water from these two sources. These proofs and permits are described as follows:

Proof of Appropriation 01614 for mining and milling purposes was filed on May 15, 1919, by George Doyle, Russell Moyle and George Cheney claiming an 1876 priority for the appropriation of all of the flow of Jacks Spring and Dry Gulch channel, including those produced by flood or snow waters. Although there is no description given of the proposed point of diversion or the proposed place of use, information contained within

³ United States Geological Survey 7.5 minute topographic map, provisional edition, Hogum Quadrangle, 1987.

the proof file indicates that they are similar to those described under Permit 5499, Certificate 562.⁴

Permit 5499 was filed on May 15, 1919, by George Doyle, Russell Moyle and George Cheney to appropriate 5.0 cfs of water from Dry Gulch and Jacks Spring for placer gold mining purposes upon patented mining claims which are located within the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 12, T.14N., R.67E., M.D.B.&M. The point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 12, with the period of use stated as March 1 to September 1 of each year. Permit 5499 was issued Certificate 562 on September 29, 1921. Currently, ownership of this water right stands in the names of Mary MacClaren Coghlan White, Virginia Bowen Lester, and Robert E. Ostlund in the records of the office of the State Engineer.⁵

Permit 7419 was filed on June 28, 1925, by George S. Robison and Sons to appropriate 0.1 cfs of water from Jacks Spring for stockwatering purposes within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T.14N., R.68E., M.D.B.&M. The point of diversion is described as being located within the same legal subdivision. Certificate 1329 was issued under Permit 7419 on February 10, 1978, to appropriate 0.012 cfs.⁶

Permit 46978 was filed on June 3, 1983, by Continental Gold, Inc., to appropriate 0.5 cfs of water from Jacks Spring for mining, milling and domestic purposes within portions of the W $\frac{1}{2}$ of Section 1, Sections 2, 3, 10, 11, 12, 13, 14, 15, and within the N $\frac{1}{2}$ of Sections 22, 23, and 24, all within T.14N., R.67E., M.D.B.&M., and within Sections 7 and 18, T.14N., R.68E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T.14N., R.68E., M.D.B.&M. Certificate 14935 was issued under Permit 46978 on June

⁴ File No. V-01614, official records in the office of the State Engineer.

⁵ File No. 5499, official records in the office of the State Engineer.

⁶ File No. 7419, official records in the office of the State Engineer.

2, 1998, to appropriate 0.50 cfs, not to exceed 90.32 million gallons annually. Under the terms of the permit, the total combined duty of Permit 46978 and Permit 5499, Certificate 562, is limited to 5.0 cfs. It should be noted that the filing of Permit 46978 post-dates Applications 38888 and 41452, however it was approved with the provision that it would share the annual duty of water already appropriated from Jacks Spring under Permit 5499, Certificate 562. This new combined duty does not exceed the original duty granted under Permit 5499, Certificate 562 and does not represent a new appropriation of water from Jacks Spring allowing it to be considered for approval before the subject applications. On December 28, 1984, ownership of Permit 46978 was transferred from Continental Gold, Inc., to Robert Ostlund.⁷

The State Engineer finds that 5.012 cfs of the waters of Dry Gulch and Jacks Spring are currently held under certificated water rights, with all of the flow, including flood and snowmelt waters claimed under a Proof of Appropriation.

IV.

All of the existing water rights filed to appropriate water from Dry Gulch and Jacks Spring capture water from points of diversion which are in close proximity or downstream from the proposed points of diversion found under Applications 38888 and 41452.⁸ The State Engineer finds that the amount of water necessary for an appropriation of water from Dry Gulch and Jacks Spring under Applications 38888 and 41452, would be so infrequent and unpredictable that it would be impractical to make beneficial use of the water. During normal years there is only sufficient

⁷ File No. 46978, official records in the office of the State Engineer.

⁸ Township index cards for T.14N., R.67E., and T.14N., R.68E., official records in the office of the State Engineer.

flow generated by snowmelt to satisfy the demands of all existing senior water rights from said sources.

V.

The record of springflow specific to Dry Gulch and Jacks Spring which can be found within the records of the office of the State Engineer covers a period of time from May 1919 up to August 1998. While some of this information was not generated by established field methods, it still provides a valuable insight into the amount of flow available for appropriation.

Field observations made during the spring of 1919 by the owner of Permit 5499 indicate that the combined flow of Dry Gulch and Jacks Spring never reached the permittee's mining operation which was located within Dry Gulch Canyon, more specifically portions of Sections 11 and 12, T.14N., R.67E., M.D.B.&M., except when augmented by occasional periods of flood or snowmelt water.

The Proof of Beneficial Use filed under Permit 5499, Certificate 562 indicates that the combined flow at the permitted point of diversion rarely exceeded 5 cfs and that during many years the flows were reduced to zero, the permittee went on to state that the average period of flow was confined to two weeks out of the entire year. The permittee in 1921 noted that "It is impossible to tell when flow will occur. It depends entirely on the season. Some years there is no flow (with) water sinking before it reaches the mine. It has flowed in May, oftener [sic] in June, usually July and occasionally as late as August."⁵

A more recent accounting of the flows of Dry Gulch and Jacks Spring can be found within the record of Permit 46978 which contains a daily record of flow rates from May 4 to July 11, 1995. An examination of this data indicates that a maximum flow rate of 4.04 cfs was attained at the permitted point of diversion

located within the NE¼ SE¼ of Section 18, T.14N., R.68E., M.D.B.&M. on May 29, 1995, with all surface flow ending by July 25, 1995. An average flow rate of 2.02 cfs was calculated from this period of record. The Proof of Beneficial Use filed under Permit 46978, Certificate 14935, indicates that the entire flow of Dry Gulch and Jacks Spring was appropriated by the permittee, who is also the owner of record of a portion of Permit 5499, Certificate 562.⁶

On August 6, 1998, an informal field investigation was conducted by personnel from the office of the State Engineer to determine the amount of water available for appropriation from Dry Gulch and Jacks Spring. At the time of the investigation, the flow of Jacks Spring was calculated to be approximately 0.02 cfs, no visit was made to Dry Gulch.²

The State Engineer finds that field observations and springflow measurements contained within the records of the State Engineer's office suggests that the availability of water from Dry Gulch and Jacks Spring is seasonal, rarely exceeding 5.0 cfs, except during spring freshets or localized heavy precipitation events.

VI.

Applications 38888 and 41452 request an appropriation of surface water from a common source whose combined flows rarely exceeds 5.0 cfs and are frequently reduced to zero for prolonged periods of time. Currently, certificated water right permits have been issued to appropriate 5.012 cfs of water from Dry Gulch and its tributary Jacks Spring. In addition, a non-adjudicated claim of vested right claiming all the flow from both sources awaits an adjudication by the State Engineer of its merits and extent. The State Engineer finds that the waters of Dry Gulch

and Jacks Spring are currently fully appropriated under existing water rights.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁹

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:¹⁰

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

III.

The proposed points of diversion described under Applications 38888 and 41452 are located in close proximity or upstream from existing points of diversion which appropriate the waters of Dry Gulch and Jacks Spring under certificated water right permits and a claim of vested right. The State Engineer concludes that the granting of Applications 38888 and 41452 would conflict with senior existing water rights which appropriate water from these sources.

IV.

Both of the subject applications request appropriations of water which far exceed the average flows generated by Dry Gulch

⁹ NRS Chapters 533 and 534.

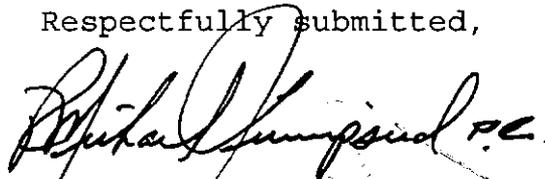
¹⁰ NRS § 533.370.

and Jacks Spring. Existing certificated water right permits have been issued by the office of the State Engineer to appropriate 5.012 cfs of water from both sources, in addition to a non-adjudicated claim of vested right, which claims a use of all the flows, including those produced by spring snowmelts. The State Engineer concludes that it would not be in the public interest to approve applications to appropriate water from sources which are currently fully appropriated under existing water rights.

RULING

Applications 38888 and 41452 are hereby denied on the grounds that their approval would conflict with existing water rights and would threaten to prove detrimental to the public interest.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/cl

Dated this 2nd day of
February, 1999.