

IN THE MATTER OF APPLICATIONS )  
30307 AND 30308 TO APPROPRIATE )  
WATER FROM NORTH SUMMIT SPRING )  
AND AN UNNAMED SPRING, RESPEC- )  
TIVELY, IN MINERAL COUNTY, NEVADA.)

R U L I N G

GENERAL:

Applications 30307 and 30308 were filed on June 4, 1976, in the name of Nevada International, Inc. Application 30307 seeks to appropriate 0.22 c.f.s. of water from North Summit Spring, the point of diversion to be located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 2, T.5N., R.36E., M.D.B.&M., unsurveyed, with the water to be used for mining, milling and domestic purposes within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of said Section 2.

Application 30308 seeks to appropriate 0.44 c.f.s. from an Unnamed Spring (aka Spring No. 2), the point of diversion to be located within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  Section 1, T.5N., R.36E., M.D.B.&M., unsurveyed, to be used for mining, milling and domestic purposes within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of said Section 1.

Although the point of diversion under both applications is located within Mineral County, Nevada, the publication notice under both applications was incorrectly mailed to the Tonopah Times Bonanza & Goldfield News for the statutory publication, and said notice was published in that newspaper on August 13, 20, 27, September 3, and 10. When it was realized that the notice had been published in the wrong county, notice under both applications was sent to the Mineral County Independent-News for republication on October 28, 1976. Accordingly, notice of these applications was published on the Mineral County Independent-News on November 3, 10, 17, 24 and December 1, 1976. The ready for action date following the second publication period was December 31st, 1976.

A single protest was filed on October 12, 1976, in the name of Stewart Elsner. This protest sought to protest both applications. By letter dated October 15, 1976, the protestant was informed that a separate protest would be required for each individual application. The protestant replied in writing that he wished to have the protest applied to Application 30307 on North Summit Spring. This protest seeks denial of Application 30307 on the grounds that "this is a deeded water and has been used by cattle & horses and for camp water for maney (sic) years."

A field investigation into the matter of Application 30308 and protested Application 30307 was conducted by members of the State Engineer's Office on January 17, 1977. The field investigation was attended by Albert W. Rudis, representing Nevada International, Inc., and by the protestant, Stewart Elsner.

North Summit Spring, the subject of protested Application 30307, has been developed by means of excavation of the spring area and by construction of a reservoir for impounding spring flow. Overflow from the reservoir was measured to be 2.6 gallons per minute, which would produce approximately 3757 gallons per day.

The unnamed spring which is the subject of Application 30308 has been developed by means of excavation of the spring and a shallow pool. Overflow from this impounding pool was too small to be measured at the time of the investigation, but was approximated to be less than  $\frac{1}{4}$  g.p.m.

There are no water rights of record on sources whose location description is the same as Applications 30307 and 30308. Application 30307 describes the point of diversion as being located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. 2, T.5N., R.36E., M.D.B.&M., and Application 30308 describes the point of diversion as being located within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 1, T.5N., R.36E., M.D.B.&M. There is of record, however, a proof of appropriation whose location corresponds closely with the point of diversion under Application 30307. Proof of Appropriation No. 02296 on North Summit Spring, claims a vested right in the amount of 0.025 c.f.s. of water or sufficient to water 100 head of cattle and 2000 goats, with a date of priority of 1895. This proof of appropriation is of record in the name of Stewart and Thelma Elsner, a  $\frac{1}{2}$ -interest, and Earl M. and Marygrace Elsner, a  $\frac{1}{2}$ -interest. The map filed in support of Proof 02296 describes North Summit Spring as being located within approximately the NW $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 2, T.5N., R.36E., M.D.B.&M. Although this location differs from the point of diversion under Application 30307, it is reasonably possible that the source, North Summit Spring, under Proof 02296 and Application 30307 are the same since the spring under the proof was located by bearing and distance tie to a mineral monument rather than an established survey monument. To further support the possibility that Application 30307 and Proof 02296 are from the same source, the proof describes the works of diversion as "storage reservoir and pipeline," and it was noted during the field investigation that water from the spring is in fact impounded within a storage reservoir before overflow is used for stock watering purposes. This source is the primary source of stock water in the near vicinity, and has historically been known as North Summit Spring.

The protestant, Stewart Elsner, holds a grazing permit from the Bureau of Land Management for the use of the public range on which these two springs are located. This grazing permit, for 630 head of cattle and 25 horses, was issued by the BLM on the basis of water rights in the area which are owned or controlled by the grazing permittee. Records of the BLM reflect water rights on North Summit Spring under Proof of Appropriation No. 02296.

Information submitted to the State Engineer's Office by Albert Rudis indicates that based upon the amount of turquoise believed to exist within the Nevada International, Inc., mining claim, there is a possibility that four trommel operations will ultimately be required. The applicant further indicated that the consumptive use of water per trommel would be 20 g.p.m. For four trommels, this would constitute a consumptive use of 80 g.p.m. (0.178 c.f.s.) and a daily flow of 115,200 gallons (42.048 m.g.a.). As has been previously stated, the normal daily flow from North Summit Spring is 4000 gallons (1.46 m.g.a.) and the daily flow from the unnamed spring is less than approximately 500 gallons (0.18 m.g.a.).

The present policy of the State Engineer is to allow 20 g.p.d. per horse or cow and 4 g.p.d. per sheep for stock watering purposes. Based upon the BLM's grazing permit to Stewart Elsner for 630 cattle and 25 horses and the need for stock to water every other day, a total of 6550 gallons per day would be required. Based upon Proof 02296, a total of 5000 g.p.d. would be necessary for watering 100 head of cattle and 2000 goats. Each of these daily stock watering requirements exceed the total measured flow of North Summit Spring under Application 30307 and the unnamed spring under Application 30308.

The limit and extent of water rights under Proof 02296 are undetermined, and can be established only through a statutory adjudication proceeding as described by NRS 533.090 through 533.320. However, evidence of record in the State Engineer's Office and gathered during the field investigation supports the existence of a valid vested right on North Summit Spring for stock watering purposes. Since the amount of water to be consumed under Application 30307 greatly exceeds the normal flow of the spring, it is therefore the opinion of the State Engineer that the issuance of a permit would tend to interfere with those vested rights claimed under Proof 02296.

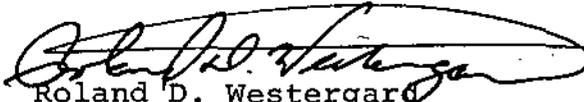
There is insufficient information available for determining the possibility of a vested right existing on the Unnamed Spring under Application 30308. However, the flow of the spring is so small that it would be completely insufficient for the use described under the application.

RULING

The protest to the granting of Application 30307 is hereby upheld, and the application is herewith denied on the grounds that the issuance of a permit would conflict with vested rights and be detrimental to the public interest.

Application 30308 is herewith denied on the grounds that there is insufficient water available for the use applied for, and that the granting of a permit would be detrimental to the public interest.

Respectfully submitted,

  
Roland D. Westergard  
State Engineer

RDW:BAR:jw

Dated this 1st day of  
March, 1977.