

IN THE MATTER OF APPLICATION 36116 FILED)
BY ELLEN BLAIR TO APPROPRIATE WATER FROM)
MILLER TUNNEL IN WALKER LAKE VALLEY,)
MINERAL COUNTY, NEVADA)

R U L I N G

FINDINGS OF FACT

I

Application 36116 was filed on October 27, 1978, by Ellen Blair to appropriate 4.0 c.f.s. of water from Miller Tunnel for irrigation and domestic purposes. The proposed point of diversion is within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17, T.7N., R.30E., M.D.B. & M. The proposed place of use is 320 acres within the W $\frac{1}{2}$ E $\frac{1}{2}$ and E $\frac{1}{2}$ W $\frac{1}{2}$ Section 17, T.7N., R.30E., M.D.B. & M.

II

A timely protest to the granting of Application 36116 was filed in the State Engineer's office on March 23, 1979, by Millard D. and Carol Mitchell which seeks denial of the application on the grounds that: "All water from this source is presently being appropriated under Permit 29636."

III

Application 36116 became ready for action by the State Engineer's office on March 31, 1979.

IV

A field investigation was previously conducted November 5, 1976, by the State Engineer's office. A copy of this investigation is filed under Permit 29636. This investigation was conducted to determine the source and amount of water flowing from Miller Tunnel. This determination was required under Permits 28639 and 29636 to determine if commencement of work required under Permit 28639 had been fulfilled. On the date of the investigation, no water was flowing from the mouth of Miller Tunnel. However, Millard and Carol Mitchell had installed a pipeline back into the tunnel from which they have received domestic water for several years.

V

Application 29636 was filed on September 9, 1975, by Millard D. and Carol Mitchell to appropriate 0.325 c.f.s. of water from an underground source within the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 17, T.7N., R.30E., M.D.B. & M., and to be used for irrigation and domestic on 13 acres within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, T.7N., R.30E., M.D.B. & M. The map filed in support of this application indicated that the underground source is Miller Tunnel. Application 29676 was approved on March 3, 1976, for the amount requested.

VI.

Application 28639 was filed on August 29, 1974, by Ellen Blair to appropriate 4.0 c.f.s. of water from Miller Tunnel located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 17, T.7N., R.30E., M.D.B. & M.; and to be used for irrigation and domestic on 320 acres within the E $\frac{1}{2}$ W $\frac{1}{2}$ and W $\frac{1}{2}$ E $\frac{1}{2}$ of Section 17, T.7N., R.30E., M.D.B. & M. Application 28639 was approved on January 6, 1975, for the amount requested. Permit 28639 was canceled January 30, 1978, for failure of permittee to file proof of completion of work within the statutory time limit.

CONCLUSIONS

- 1) Field investigation indicated that there is insufficient water available in excess of Permit 29636.
- 2) The State Engineer has jurisdiction of the parties and the subject matter of this action in accordance with NRS 533.025 and NRS 533.030, subsection 1.
- 3) The State Engineer is prohibited by law from granting a permit where:
 - 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 welfare in accordance with NRS 533.370, subsection 4.

RULING

Application 36116 is denied and the protest to Application 36116 is upheld on the grounds that there is no water available for appropriation. The granting of Application 36116 would impair the value of existing rights and would be detrimental to the public interest and welfare.

Respectfully submitted,

William J. Newman

William J. Newman
State Engineer

WJN/DC/jm

Dated this 6th day

of JUNE, 1979.