

IN THE MATTER OF APPLICATION NO. )  
35332 FILED BY HALLIE PEIFER )  
FOR PERMISSION TO APPROPRIATE )  
WATER FROM AN UNNAMED SPRING )  
IN PERSHING COUNTY, NEVADA. )

R U L I N G

80

GENERAL

Application No. 35332 was filed on April 25, 1978, by Hallie Pfeifer for permission to appropriate 1.0 c.f.s. of water from an unnamed spring for mining, milling and domestic purposes. The point of diversion is within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  Section 25, T.28N., R.24E., M.D.B.&M. The place of use is described as follows:

T.28N., R.34E.  
Sec. 25: S $\frac{1}{2}$  NE $\frac{1}{4}$   
SE $\frac{1}{4}$

T.28N., R.35E.  
Sec. 30: S $\frac{1}{2}$  SW $\frac{1}{4}$

Sec. 31: N $\frac{1}{2}$  NW $\frac{1}{4}$   
NE $\frac{1}{4}$

Sec. 32: NW $\frac{1}{4}$   
N $\frac{1}{2}$  SW $\frac{1}{4}$

The period of use is from January 1st to December 31st of each year.

Application 35332 was protested on August 3, 1978, by Fred R. Lynch, as follows:

"It adversely affects our prior water rights, Certificate #754. The water is not being taken from a spring but out of the creek in Troy Canyon and is taking it all."

Certificate 754 was issued under the terms of Permit 5820 for the appropriation of 0.015 cfs of water from Troy Canyon at a point within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 26, T.28N., R.34E., M.D.B.&M. for stock watering and domestic purposes between January 1st and December 31st of each year. The place of use is within the same subdivision as the point of diversion. The owners of record of Permit 5820 are Fred R. and Mary Ann Lynch.

A field investigation was held in the matter of Application 35332 on October 1, 1979. It was established at the field investigation that the proposed point of diversion under Application 35332 was downstream of the point of diversion under Certificate 754, issued under Permit 5820. It was also established at the field investigation that Fred Lynch, owner of Permit 5820, was under the misunderstanding that the total length of the Troy Canyon drainage was for his use, rather than the troughs located in the same subdivision as his point of diversion, as described under Certificate 754, Permit 5820. Mr. Lynch agreed to withdraw his protest upon being apprised of the nature and extent of his right, subject to a "few terms" as it is put in the report of field investigation.

The field investigation also established that the source of water is Troy Canyon, rather than an unnamed spring.

The protest to Application 35332 was withdrawn by Mr. Fred R. Lynch by letter dated January 10, 1980, received in the office of the Division of Water Resources on January 14, 1980. The withdrawal is as follows: "I received Mr. Pfeifers (sic) letter in which he agrees to return the same volume of water to the creek channel below his operation as he removes from above. For his doing this I withdraw my protest 35332.

Sincerely

/s/ Fred R. Lynch"

A copy of Mr. Pfeifer's letter to which Mr. Lynch refers has not been received in the office of the Division of Water Resources.

#### OPINION

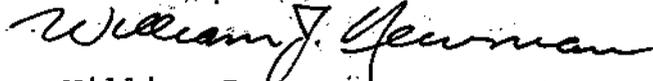
It is the opinion of the State Engineer that the decision in the matter of Application 35332 should be made on the merits of the application and the protest thereto. The withdrawal of the protest to Application 35332 should not be accepted, since it is based upon terms and conditions not known to the State Engineer; and in fact, if Application 35332 is approved based upon withdrawal of the protest, the State Engineer would, in effect, be incorporating terms in the permit that might not be warranted by the facts in the case.

The point of diversion contemplated under Application 35332 is downstream of the point of diversion described in Certificate 754, Permit 5820. The proposed diversion will therefore not interfere with the water right established by Certificate 754, Permit 5820.

RULING

The protest to Application 35332 is overruled, on the grounds that there is unappropriated water in the source; that the proposed appropriation does not tend to impair the value of existing rights; and that the proposed appropriation will not be otherwise detrimental to the public welfare. A permit will be issued under Application 35332 upon payment of the statutorily required permit fees.

Respectfully submitted,



William J. Newman  
State Engineer

WJN:JCP:jw

Dated this 1st day of  
May, 1980.