

IN THE MATTER OF APPLICATIONS 40759,)
40760 AND 40761 FILED BY RALPH CAMPBELL)
ON FEBRUARY 27, 1980, FOR PERMISSION TO)
APPROPRIATE WATER FROM WATER CANYON)
SPRING, BILLY POPE SPRING AND MUD)
SPRING, RESPECTIVELY, IN WHITE PINE)
COUNTY, NEVADA)

R U L I N G

17A

INTRODUCTION

Applications 40759, 40760 and 40761 were filed by Ralph Cambell in the State Engineer's office on February 27, 1980 for permission to appropriate water from Water Canyon Spring, Billy Pope Spring and Mud Spring, respectively, for mining, milling and domestic purposes in White Pine County, Nevada.

FINDINGS OF FACT

I

Ralph Campbell filed Application 40759 on February 27, 1980, for permission to appropriate 0.2 c.f.s. of water from Water Canyon Spring at a point within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 9, T.20N., R.63E., M.D.M. (unsurveyed) for mining, milling and domestic purposes. The place of use is within portions of the SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 9. The period of use is from January 1st to December 31st of each year.

Ralph Campbell filed Application 40760 on February 27, 1980, for permission to appropriate 0.2 c.f.s. of water from Billy Pope Spring at a point within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5, T.20N., R.63E., M.D.M. (unsurveyed) for mining, milling and domestic purposes. The place of use and period of use are the same as described in Application 40759.

Ralph Campbell filed Application 40761 on February 27, 1980, for permission to appropriate 0.2 c.f.s. of water from Mud Spring at a point within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 9, T.20N., R.63E., M.D.M. (unsurveyed) for mining, milling and domestic purposes. The period of use and place of use are the same as described in Application 40759. 1/

II

Proof of Appropriation 01417 was filed on August 4, 1915 by W. D. Campbell claiming a vested right for the appropriation of sufficient water to water 150 head of cattle and horses, initiated in 1880. The heading of Proof 01417 names Water Canyon Spring and Mud Spring as the sources of water, but in parenthesis states 3 springs. A map filed on November 26, 1915 in support of Proof 01417 shows three sources of water; namely, Billy Pope Spring, Water Canyon Spring and Mud Spring.

The map shows the point of diversion of Billy Pope Spring as being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 5; of Water Canyon Spring, within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5; and of Mud Spring within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 9; all in T.20N., R.63E., M.D.M. (unsurveyed).

The owner of record of Proof 01417 is Steptoe Ranch Co. 1/

III

Applications 40759, 40760 and 40761 were each protested on July 11, 1980 by Steptoe Ranch Co., Inc., on identical grounds, as follows: "The granting of this application would conflict with existing water rights on this source and there is insufficient water on this source to handle existing rights, therefore there are no available waters for appropriation." 1/

IV

A field investigation in the matter of Applications 40759, 40760 and 40761 was held on September 25, 1980. At the time of the investigation, Water Canyon Spring (40759) was estimated to be flowing at 10 gallons per minute; Billy Pope Spring (40760) at 10 gallons per hour; and Mud Spring (40761) at 1 gallon per hour. 2/

V

There are no visible works of diversion at Water Canyon Spring (Application 40759). 2/

VI

The works of diversion at Billy Pope Spring (Application 40760) consist of a 2 foot square box which is fed by a 2 inch diameter pipe about 60 feet long leading from the spring to the box. Water overflows from the box onto a marshy area below the spring. There are no stock-watering troughs at the site. 2/

VII

The works of diversion at Mud Spring (Application 40761) consist of a concrete tank about 12 feet square into which water is discharged from a two inch diameter cast iron pipe. The source of water is a cut and tunnel about 150 feet to the west of the tank. 2/

CONCLUSIONS

I

The State Engineer has jurisdiction under NRS 533.025 and 533.030, subsection 1. 3/

II

The State Engineer is prohibited by law from granting a permit where:

- A. There is no unappropriated water in the source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to be detrimental to the public welfare. 4/

III

Evidence in this office and the field investigation indicates that the water from the sources described in Applications 40759, 40760 and 40761 has been used beneficially for stockwatering purposes since prior to 1905. 1/ Although the limit and extent of this right can only be finally determined in an adjudication proceeding in accordance with Chapter 533 of Nevada Revised Statutes; NRS 533.085(1) expressly prohibits the impairment of any vested rights. All the evidence of record in these proceedings indicates that Proof of Appropriation 01417 is valid.

The field investigation established that the works of diversion at Billy Pope Spring (Application 40760) and Mud Spring (Application 40761) showed some lack of maintenance. Possibly more water could be developed at these sources by cleaning the springs and replacement or repair of the pipelines. However, no concrete evidence was presented to substantiate such a contention.

There is a possibility that attempted development of the springs by such measures as excavation, blasting or other similar activities would result in a reduction or cessation of flow of the springs, especially where only small flows are occurring naturally.

The field investigation also established that at the time of the investigation there was sufficient water being discharged from Water Canyon Spring to satisfy existing rights.

There was conflicting evidence at the field investigation as to the historic flow of the sources described in Applications 40759, 40760 and 40761. The flow evidently will vary from year to year, depending upon the amount of precipitation received in each year.

Applications 40759, 40760 and 40761 seek to appropriate 89.77 gallons per minute from each spring or a total of 269.30 gallons per minute. The Water Canyon Spring flows only 10 gallons per minute, Billy Pope Spring flows 0.17 gallons per minute, and Mud Springs flows 0.02 gallons per minute, for a total of 10.19 gallons per minute, some 259 gallons per minute less than the amount requested.

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There is obviously insufficient water available to supply the diversion rate applied for in the subject applications.

Although there may be a small amount of unappropriated water in Water Canyon Spring, evidence indicates it is nowhere near the amount applied for under Application 40759. To grant Application 40759 (Water Canyon Spring) a right to divert 89 gallons per minute (0.20 c.f.s.), in a source which is only producing 10 gallons per minute, a portion of which has been heretofore appropriated would tend to conflict with such existing right.

There is no unappropriated water in either Billy Pope Spring or Mud Spring. Therefore, it is concluded that granting Application No. 40759 would conflict with existing rights; and that there is no unappropriated water in the sources described in Applications 40760 and 40761.

RULING

The protests to Applications 40759, 40760 and 40761 are upheld and accordingly Applications 40759, 40760 and 40761 are hereby denied on the grounds that Application 40759 would conflict with existing rights on the source; and that there is no unappropriated water available for Applications 40760 and 40761.

Respectfully submitted,



Peter G. Morros
State Engineer

PGM/LCR/bc

Dated this 30th day of
JULY, 1981.

FOOTNOTES

1. Public records available in the office of the State Engineer.
2. Public records available in the office of the State Engineer.
See Report of Field Investigation No. 693.
3. NRS 533.025 and 533.030, subsection 1.
4. NRS 533.370, subsection 4.