

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 43318,  
43774 AND 48288 FILED TO APPROPRIATE)  
THE PUBLIC WATERS OF AN)  
UNDERGROUND SOURCE IN SMITH VALLEY,  
LYON COUNTY, NEVADA. )

RULING

GENERAL

Application 43318 was filed on March 11, 1981, by John P. Bielaski to appropriate 1.0 c.f.s. of water from an underground source for mining purposes within the SW1/4 SE1/4 Section 8, T.13N., R.24E., M.D.B.&M. The point of diversion is described as being within the NW1/4 NE1/4 Section 20, T.13N., R.24E., M.D.B.&M.<sup>1</sup>

Application 43774 was filed on May 21, 1981, by Nevada Placer Mining Company to appropriate 1.0 c.f.s. of water from an underground source for mining purposes within portions of the SW1/4, SE1/4 Section 8; portions of the SW1/4, SE1/4, N1/2 Section 17; and portions of the SW1/4 Section 16, all in T.13N., R.24E., M.D.B.&M. The point of diversion is described as being within the NW1/4 NE1/4 Section 20, T.13N., R.24E., M.D.B.&M.<sup>1</sup>

Application 48288 was filed on August 10, 1984, by John P. Bielaski to appropriate 1.0 c.f.s. of water from an underground source for mining purposes within the SW1/4 SE1/4 Section 8, T.13N., R.24E., M.D.B.&M. The point of diversion is described as being within the NW1/4 NE1/4 Section 20, T.13N., R.24E., M.D.B.&M.<sup>1</sup>

Permit 23097 was issued on November 21, 1966, to Valley Ready Mix. Permit 23097 was cancelled on July 23, 1968, for failure to file proof of completion of work. However, the well was drilled and the well log (#8933) was received on April 18, 1966. The point of diversion is described as being within the NW1/4 NE1/4 Section 20, T.13N., R.24E., M.D.B.&M.<sup>1</sup>

Application 43318 was protested in a timely manner on May 21, 1981, by Nevada Placer Mining Company on the grounds that: "The existing well for which the above application is made is located on mining claims presently being purchased by protestant".<sup>1</sup>

A field investigation was held on December 11, 1984, as a result of the protest to Application 43318.<sup>2</sup>

A public hearing was held on March 1, 1985, before the State Engineer in Yerington, Nevada. The purpose of the hearing was to collect additional information and evidence regarding Applications 43318 and 43774.<sup>3</sup>

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<sup>1</sup> Public record in the office of the State Engineer.

<sup>2</sup> Report of field investigation, public record in the office of the State Engineer.

<sup>3</sup> Transcript, public record in the office of the State Engineer.

## FINDINGS OF FACT

### I.

The point of diversion under Applications 43318, 43774, 48288 and cancelled Permit 23097 is the same well which was drilled by Valley Ready Mix under Permit 23097.

### II.

The incorporation of Nevada Placer Mining Company was revoked by the Nevada Secretary of State on September 1, 1982. All holdings of Nevada Placer Mining Co. are now owned by Mr. N.S. Schwartz.<sup>4</sup>

### III.

The point of diversion under Applications 43318, 43774 and 48288 is located on an unpatented placer mining claim called the "Bovie-Lew #10". The place of use of Applications 43318 and 48288 is within unpatented mining claim "Bovie-Lew #A". The place of use under Application 43774 is within the unpatented mining claims "Bovie-Lew and Bovie-Lew Nos. A, 1, 1A, 2, 3, 4, 5, 7, 11 and 11A".

### IV.

The State Engineer was advised by the United States Bureau of Land Management that the holder of an unpatented mining claim cannot necessarily restrict access by the general public to, or the use of, the land on which the claim rests.<sup>5</sup>

### V.

There was no conclusive evidence presented at the formal field investigation held on December 11, 1984, or the public hearing held on March 1, 1985, which demonstrated that Applicant, John P. Bielaski could not acquire access to the well or the lands described under the place of use and, therefore, not be able to place the water to beneficial use.<sup>6</sup>

## CONCLUSIONS

### I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.<sup>7</sup>

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<sup>4</sup> Personal communique with the Secretary of State's office.

<sup>5</sup> Personal communique with the U.S. Bureau of Land Management.

<sup>6</sup> Report of Field Investigation No. 750 and transcript of public hearing, on file in the office of the State Engineer.

<sup>7</sup> NRS 533.325.

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:<sup>8</sup>

- 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 interest.

III.

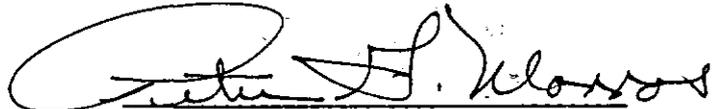
Application 43318 was filed earlier in time than Applications 43774 and 48288 and, by Nevada law,<sup>9</sup> the date of priority is the date an application is filed in the office of the State Engineer.

RULING

The protest to the granting of Application 43318 is hereby overruled on the grounds that said application was first in priority and that there are no existing rights to impair. A permit will be issued under said application on receipt of the statutory permit fees.

Applications 43774 and 48288 are hereby denied on the grounds that, if granted, they would tend to impair existing rights.

Respectfully submitted,

  
PETER G. MORROS  
State Engineer

PGM/GT/bl

Dated this 22nd day of  
July, 1985.

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<sup>8</sup> NRS 533.370.

<sup>9</sup> NRS 533.355.