

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 48546)  
AND 48547 FILED TO APPROPRIATE THE)  
PUBLIC WATERS OF JOSIE PEARL SPRING IN)  
THE BLACK ROCK DESERT DRAINAGE,) )  
HUMBOLDT COUNTY, NEVADA. )

RULING

GENERAL

Application 48546 was filed on November 9, 1984, by Bandera Energy and Minerals Corp. to appropriate 0.005 c.f.s. of water from Josie Pearl Spring for quasi-municipal purposes for a mining camp within the NW1/4 SE1/4 Section 25, T.42N., R.27E., M.D.B.&M. The point of diversion is described as being within the SE1/4 SW1/4 Section 25, T.42N., R.27E., M.D.B.&M.<sup>1</sup>

Application 48547 was filed on November 9, 1984, by Dennie E. Pridemore and Alzina Osborne to appropriate 0.0446 c.f.s. of water from Josie Pearl Spring for quasi-municipal purposes for a mining camp of 50 people in 10 dwellings within the E1/2 SE1/4 Section 25, T.42N., R.27E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SW1/4 Section 25, T.42N., R.27E., M.D.B.&M.<sup>1</sup>

Applications 48546 and 48547 were processed according to NRS 533.360 and said applications were timely protested by Pine Forest Land and Stock Co. on the grounds that they owned grazing rights in the area and have vested water rights for stockwatering. In addition, Application 48547 was protested by the U.S. Bureau of Land Management on the grounds that the water could not be put to beneficial use because the applicant owns no land in the area.<sup>1</sup>

FINDINGS OF FACT

I.

A field investigation was made by representatives of the State Engineer's office on September 4, 1985 on Josie Pearl Spring (Springs).<sup>2</sup>

II.

There are at least two (2) springs in the (unsurveyed) SW1/4 Section 25, T.42N., R.27E., M.D.B.&M., and another spring near the SW1/4 SE1/4 Section 25, T.42N., R.27E., M.D.B.&M., which may account for the points of diversion being different for the "Josie Pearl Spring(s)".<sup>3</sup>

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

<sup>2</sup> See memo to files 48546 and 48547 and report of field investigation filed under Application 48947.

<sup>3</sup> See USGS 15 minute topographic map "Idaho Canyon Quad".

III.

Water rights of record for springs in the (unsurveyed) SW1/4 Section 25, T.42N., R.27E., M.D.B.&M., are as follows:<sup>4</sup>

<u>PERMIT/ CLAIM</u>	<u>OWNER</u>	<u>USE</u>	<u>QTY (C.F.S.)</u>
02105	Kenneth H. & Doris N. Earp	100 cattle, 1500 sheep	—
11395	Kenneth H. & Doris N. Earp	1000 cattle	0.03125

IV.

NRS 533.367 provides that before a person may obtain a right to the use of water from a spring or seep, he must ensure that wildlife which customarily uses the water will have access to it.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.<sup>5</sup>

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:<sup>6</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.

It is evident from the field investigation that the springs flow sufficient water to satisfy the existing stockwatering rights plus water for these new appropriations.

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<sup>4</sup> A search of the records of water rights on file in the State Engineer's office revealed two (2) stockwatering rights, neither of which are in the name of the protestant, but admittedly the protestant could be the successor to the B.L.M. permits for the range use, however, title has not been changed.

<sup>5</sup> NRS 533.325.

<sup>6</sup> NRS 533.370(3).

IV.

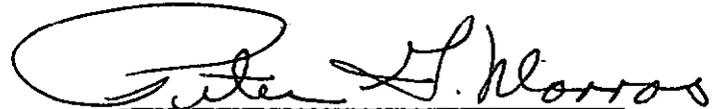
The protest of the Bureau of Land Management is not an issue since fee title to the place of use is not required for a mining camp. The applicant shall have to comply with all other permits required by federal, local and other State agencies as a condition of approval.

RULING

The protests to Applications 48546 and 48547 are hereby overruled and the applications are hereby approved subject to the submission of the statutory permit fees and subject to the following conditions:

1. Issued subject to all existing rights;
2. Issued subject to the provisions of NRS 533.367;
3. The permittee will not interfere with or impair the beneficial use of water under Permit 11395 and Proof of Appropriation 02105; and
4. The applicant must obtain all other federal, State and local approvals required for the beneficial use set forth herein.

Respectfully submitted,



PETER G. MORROS  
State Engineer

PGM/MT/bl

Dated this 17th day of  
December, 1985.