

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 46663)
AND 46664 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE AND APPLICATION 48527 FILED TO)
APPROPRIATE THE WATERS OF DUN GLEN)
CREEK IN THE IMLAY AREA, PERSHING)
COUNTY, NEVADA.)

RULING

GENERAL

Application 46663 was filed on February 22, 1983, by Art and Ruth Baker to appropriate 1.0 c.f.s. of water from an underground source for mining, milling and domestic purposes within the NW1/4 SW1/4 Section 16, T.33N., R.36E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NE1/4 Section 16, T.33N., R.36E., M.D.B.&M.¹

Application 46664 was filed on February 22, 1983, by Art and Ruth Baker to appropriate 1.0 c.f.s. of water from an underground source for mining, milling and domestic purposes within the NW1/4 SW1/4 Section 16, T.33N., R.36E. M.D.B.&M. The point of diversion is described as being within the NW1/4 NE1/4 Section 16, T.33N., R.36E., M.D.B.&M.¹

Application 48527 was filed on November 1, 1984, by Arthur L. and Ruth B. Baker to appropriate 3.0 c.f.s. of water from Dun Glen Creek for mining, milling and domestic purposes within the SE1/4 NW1/4 Section 16, T.33N., R.36E., M.D.B.&M. The point of diversion is described as being within the SE1/4 NW1/4 Section 16, T.33N., R.36E., M.D.B.&M.¹

Applications 46663 and 46664 were timely protested by the Star Sheep Company, Robert Belzarena, President, on the following grounds:¹

"Protestant has a certificated water right for stockwater in and to Dun Glen Creek. That the granting of this application(s) will adversely affect the springs that are tributary to Dun Glen Creek which in turn will affect the rights of protestant"

The protestant requested Applications 46663 and 46664 be denied.

A field investigation was made on August 16, 1984, to attempt to resolve the protests and to gather additional information for the State Engineer.¹

At the conclusion of the investigation, Mr. Robert Belzarena, Protestant, and Mr. Baker, Applicant, were to make available to this office a copy of an agreement that provided for a flow of 20 gallons per minute of suitable stockwater at a point on Dun Glen Creek, currently used by the protestant, in exchange for a withdrawal of the protest of the above referenced applications.

¹ Public record in the office of the State Engineer.

Action on these applications was to be withheld pending receipt of the agreement.

On October 17, 1985, a hearing was held before the State Engineer in the matter of Application 48527 to develop more information pending action on said request.² Mr. Belzarena, who holds prior rights down stream, and Mr. Bart Conn, representing the applicant, were to submit a signed agreement providing a flow of 20 gallons per minute to the Star Sheep Company.

FINDINGS OF FACT

I.

On December 12, 1985, a letter was sent to the attorneys representing the applicant under Applications 46663, 46664 and 48527 and Protestant Star Sheep Company requesting receipt of the aforementioned agreement and/or a letter of withdrawal of subject protests or applications.

Reponses were received from O. Kent Maher, Esq., representing Star Sheep Company, on December 19, 1985, and March 31, 1986, indicating that further interest on the part of the applicant was doubtful.¹

No response has been received to date by this office from the applicant or his attorney.¹

II.

Existing water rights and claims of vested right of record for Dun Glen Creek located in Imlay area are as follows:

1. Proof 0774 was filed on June 25, 1910, by J.H. Hendra claiming a vested right to tributary springs for irrigation, stockwater and domestic purposes. A priority date of 1868 is claimed.¹
2. Proof 01112 was filed on April 3, 1912, by Lucy M. Hendra claiming vested right for irrigation of 6.15 acres. A priority date of 1863 is claimed.¹
3. Permit 17552 was filed by C.H. Baker and Arthur L. Baker on May 1, 1958. Certificate 5432 was issued for 0.5 c.f.s. of water for placer mining and domestic purposes.¹ The current owners of record are Proquip, Inc., and Arthur L. and Ruth B. Baker.¹
4. Permit 22898 was filed on December 21, 1965, by the Star Sheep Company. Certificate 7037 was issued for 0.0212 c.f.s. of water for stockwatering purposes.¹

² Transcript of the October 17, 1985, hearing is a public record in the office of the State Engineer.

III.

There is substantial evidence, as a result of examination of records in the State Engineers office and field investigations, that there is a likelihood of additional claims of vested rights for stockwatering and/or irrigation from Dun Glen Creek at such time as a general adjudication of the source is initiated.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.³

II.

The State Engineer is prohibited by statute from granting a permit where:⁴

- A. There is no unappropriated water at the source, or
- B. The proposed use or change conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public interest.

III.

The State Engineer may require additional information before approval or rejection of an application.⁵

IV.

Approval of Application 48527 would allow substantial diversion of water upstream of prior rights of record on Dun Glen Creek and, in the State Engineer's judgement, approval of Application 48527 would tend to interfere with and impair existing rights.

V.

The applicants have failed to demonstrate a continued interest in the subject applications and have failed to provide the State Engineer with additional information.

³ NRS 533.325.

⁴ NRS 533.370(3).

⁵ NRS 533.375

RULING

Applications 46663, 46664 and 48527 are hereby denied on the grounds that the additional information requested from the applicant was not received by the State Engineer and to approve said applications without the additional information requested would not be in the public interest. Additionally Application 48527 is denied on the grounds that the granting thereof would tend to interfere with and impair existing rights.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Peter G. Morros", is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

PETER G. MORROS
State Engineer

PGM/GC/jjk

Dated this 20th day of
November, 1986.