

IN THE MATTER OF APPLICATIONS NOS. 16982 AND 17026, IN THE NAME OF JOHN E. AND ALICE N. TRAIL, TO CHANGE PERMITS NOS. 7771 AND 7772, RESPECTIVELY, AND PERMITS NOS. 17090 AND 17091, FILED BY JOHN C., NORA L. AND HAROLD J. FARETTO, TO APPROPRIATE WATERS FROM SEVERAL SPRINGS, ALL IN WASHOE COUNTY, NEVADA.

RULING

Description of Applications:

92A

Application No. 16982 was filed on July 12, 1956, by A. E. Anderson to change the place and manner of use of 0.0125 c.f.s. of the waters of Milk or Anderson Springs under certificate No. 2122, issued on September 13, 1935, under Permit No. 7772 for stockwatering purposes. The point of diversion is in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 12, T. 20 N., R. 18 E., M.D.B.&M. The existing place of use is within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 1, T. 20 N., R. 18 E., M.D.B.&M. The proposed place of use is to be within the W $\frac{1}{2}$ of SW $\frac{1}{4}$ Sec. 1, T. 20 N., R. 18 E., M.D.B.&M., where it is to be used for quasi-municipal (subdivision) purposes.

On September 28, 1956, the application was assigned by deed from A. E. Anderson to John E. and Alice N. Trail. A protest against the granting of this application was filed on November 13, 1956 by John C., Nora L., and Harold J. Faretto.

Application No. 17026 was filed on August 23, 1956, by A. E. Anderson to change the place and manner of use of 0.0125 c.f.s. of the waters of Anderson Spring No. 1, under Certificate No. 2121, issued on September 13, 1935 under Permit No. 7771 for stockwatering purposes. The point of diversion is in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 12, T. 20 N., R. 18 E., M.D.B.&M. The existing place of use is within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 1, T. 20 N., R. 18 E., M.D.B.&M. The proposed place of use is to be within the W $\frac{1}{2}$ of SW $\frac{1}{4}$ Sec. 1, T. 20 N., R. 18 E., M.D.B.&M., where it is to be used for quasi-municipal (subdivision) purposes.

On March 29, 1957, the application was assigned by A. E. Anderson to John E. and Alice N. Trail. A protest against the granting of this application was filed on November 13, 1956 by John C., Nora L., and Harold J. Faretto.

Application No. 17090 was filed on November 8, 1956, by John C., Nora L., and Harold J. Faretto to appropriate 0.125 c.f.s. of the waters of Faretto Spring No. 5 for stockwatering

purposes. The proposed point of diversion and place of use is to be within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 12, T. 20 N., R. 18 E., M.D.B.&M.

A protest against the granting of this application was filed on May 24, 1957, by John E. and Alice N. Trail.

Application No. 17091 was filed on November 8, 1956, by John C., Nora L. and Harold J. Faretto to appropriate 0.25 c.f.s. of the waters of Faretto Springs (four flowing springs) for irrigation and domestic purposes. The point of diversion and place of use is to be within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 12, T. 20 N., R. 18 E., M.D.B.&M.

A protest against the granting of this application was filed on July 17, 1957, by John E. and Alice N. Trail.

Findings:

On December 3, 1956 a field investigation was made by this office and on April 16 and 17, 1959 a hearing was held in the Washoe County Court House, Reno, Nevada. From the investigation, hearing and the records in this office the following findings are made:

1. Anderson Springs Nos. 2, 3, 4 and 5, described by Certificate No. 2122, issued under Permit No. 7772, and Application No. 16982 are the same springs described as Faretto Springs Nos. 1, 2, 3 and 4, under Application No. 17091. All of these springs are located within a fenced area in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 12, T. 20 N., R. 18 E., M.D.B.&M., at the present time owned by John C., Nora L. and Harold J. Faretto. The area has been fenced since prior to 1934.

According to office records, Application No. 7772 was filed on June 2, 1926 by Henry Anderson to appropriate the waters of these springs for irrigation, stockwatering and domestic purposes. A protest to the granting of this application was filed on July 19, 1926 by J. S. Gaston. Application No. 7778 was filed on June 16, 1926 by J. S. Gaston to appropriate the waters of these springs for irrigation, stockwatering and domestic purposes. A protest to the granting of this application was filed on August 30, 1926 by Henry Anderson. On August 10, 1927 the State Engineer issued a ruling granting application No. 7772 and denying application No. 7778, on the following grounds:

"Evidence submitted at the hearing held in connection with this matter on July 29, 1927, leads this office to conclude that the applicant has a substantial claim of vested right to the use of these springs for irrigation and stockwatering purposes in addition to his rights of priority under the applications. Testimony of applicant was to the effect that he had developed these springs prior to 1905, by the installation of pipes which carried the major portion of the water to a ravine where it had comingled with other water and had contributed to his source of supply up to about the time of protestants moving on land where springs are located. Evidence submitted was more or less conflicting as to the amount of water developed and the quantity which would actually reach the lands to be irrigated. However, in making a decision in the premises, the actual quantity developed and the amount which reached the place of use is of minor importance, the main factor being that some of the water developed actually is available for beneficial use by the applicant.

"The testimony does not indicate other than that the springs had in the past, and if unmolested, would in the future tend to augment the supply from other sources used by the applicant. The applications of Henry Anderson, Nos. 7771 and 7772, respectively, will therefore be approved. Applications Nos. 7778 and 7779 of J. S. Gaston on the same source, are herewith denied."

The applicant referred to in the ruling is Henry Anderson and the protestant J. S. Gaston.

A permit was issued under Application No. 7772 on November 3, 1927. All proofs were filed and Certificate No. 2122 was issued under the permit for 0.0125 c.f.s. for stockwatering purposes under date of September 13, 1935.

The waters of these springs have been diverted and used for irrigation, stockwatering and domestic purposes by John C., Nora L. and Harold J. Faretto since 1942 and the testimony indicates that their predecessor, J. S. Gaston, diverted and used them prior to 1942. The testimony discloses that the waters of these springs have not flowed off of the property of John C., Nora L. and Harold J. Faretto on to the lands now owned by John E. and Alice N. Trail since 1935 and the testimony indicates that beneficial use of the water has not been made under Permit No. 7772 since 1935.

2. Anderson Spring No. 1 under Certificate No. 2121, issued under Permit No. 7771 and Application No. 17026 is the same spring described as Faretto Spring No. 5 under Application No. 17090.

This spring is located on fenced property in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 12, T. 20 N., R. 18 E., M.D.B.&M., at the present time owned by John C., Nora L. and Harold J. Faretto. The property has been fenced since 1942. The spring rises in a natural drainage channel, which flows north from Peavine Mountain toward Silver Lake. A small dam has been constructed across the channel, immediately below the spring by the Faretto's, creating a small reservoir. The waters of the spring fill the small reservoir and overflow into the channel. The water flow disappears and rises at several points in the channel across the Faretto property and flows on to property now owned by John E. and Alice N. Trail, in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 1, T. 20 N., R. 18 E., MD.B.&M. Although all of the waters flowing in the drainage channel may not be derived from Anderson Spring No. 1, there is no question that this source is a valuable contributor to the flow. John C., Nora L. and Harold J. Faretto have used the waters of this source for stockwatering purposes since 1941, however, it is our opinion that the use has not prevented use of the water under Permit No. 7771. It is also our opinion that there is sufficient water in the source to satisfy the water right under Permit No. 7771, in the name of John E. and Alice N. Trail and Application No. 17090, filed by John C., Nora L. and Harold J. Faretto.

RULING

The protest to the granting of Application No. 17026 is hereby overruled on grounds that its granting will not impair the value of existing rights or be otherwise detrimental to the public welfare. A permit will be issued under this application on receipt of the statutory permit fee.

It is the opinion of this office that the water rights under Certificate No. 2122 issued under Permit No. 7772 have been abandoned on the grounds that the water has been diverted and used in its entirety by the protestants under application No. 16982 and by their predecessors in interest since 1935. The protest to the granting of Application No. 16982 is sustained and Application No. 16982 is hereby denied.

The protest to the granting of Application No. 17090 is herewith overruled on grounds that its granting will not impair the value of existing rights or be otherwise detrimental to the public welfare. A permit will be issued under this application on receipt of the statutory permit fee, subject to the following provisions:

1. The permit will be issued subject to existing and prior rights.
2. The amount of appropriation will be reduced from 0.125 c.f.s., requested in the application, to 0.0019 c.f.s., or sufficient to water 60 head of cattle.
3. The permittee must remove the existing dam and reservoir and install a stockwatering trough, equipped with a float valve to prevent waste of water when the stockwatering facilities are not in use.

The protest to the granting of Application No. 17091 is herewith overruled on grounds that its granting will not impair the value of existing rights or be otherwise detrimental to the public welfare. A permit will be issued under this application on receipt of the statutory permit fee.

Respectfully submitted,



EDMUND A. MUTH
State Engineer.

Dated this 20th day
of November, 1959.