

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 49793)  
AND 49826 FILED TO APPROPRIATE THE)  
PUBLIC WATERS OF COLD SPRINGS, AND)  
APPLICATION 49827 FILED TO)  
APPROPRIATE THE PUBLIC WATERS OF)  
STREIB SPRING IN COLD SPRING VALLEY,)  
WASHOE COUNTY, NEVADA. )

RULING

GENERAL

Application 49793 was filed on March 31, 1986, by Ruth D. Mathews to appropriate 0.1 c.f.s. of water from Cold Spring, aka Cold Springs, for quasi-municipal purposes within the SW1/4 NE1/4 Section 4, T.21N., R.18E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NE1/4 Section 4, T.21N., R.18E., M.D.B.&M.<sup>1</sup>

Application 49826 was filed on April 15, 1986, by Donnell J. Richards to appropriate 1.0 c.f.s. of water from Cold Spring for irrigation and domestic purposes on 160 acres of land within the S1/2 NW1/4, SW1/4 NE1/4 and NW1/4 SE1/4 Section 16, T.21N., R.18E., M.D.B.&M. The point of diversion is described as being within the SE1/4 NE1/4 Section 4, T.21N., R.18E., M.D.B.&M.<sup>1</sup>

Application 49827 was filed on April 15, 1986, by Donnell J. Richards to appropriate 1.0 c.f.s. of water from Streib Spring for irrigation and domestic purposes on 160 acres of land within the S1/2 NW1/4, SW1/4 NE1/4 and NW1/4 SE1/4 Section 16, T.21N., R.18E., M.D.B.&M. The point of diversion is described as being within the SE1/4 SW1/4 Section 4, T.21N., R.18E., M.D.B.&M.<sup>1</sup>

Applications 49793, 49826 and 49827 were timely protested by William A. Molini, Department of Wildlife, on the following grounds:<sup>1</sup>

"This (these) spring(s) is (are) the source of water for mule deer on the southern portion of the Peterson Mountains. Presently, there are 500-700 deer that migrate into and out of the state using this particular area as a migration corridor. Mule deer are dependant upon this (these) source(s) during their spring migration to the summer ranges in California.

The applicant is applying for a quantity of water that, added to existing water rights, would exceed the capacity at the source to meet mule deer demands."

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

Regarding Application 49793:

"In addition to this direct impact, the applicant intends to develop eight homes that would increase activities and disturbances to mule deer during critical times of the year."

Application 49826 was timely protested by P. Joan Vierra, David B. Evans and John B. Evans on the following grounds:<sup>1</sup>

"The protestants are the owners of a prior right on the spring located at the point of diversion described in Application No. 49826 pursuant to Certificate No. 463, issued under Permit No. 4762 for 0.27 c.f.s. according to that certain order of the State Engineer dated June 17, 1986. Pursuant to said Order, less than 0.27 c.f.s. of water is available from this source; therefore no unappropriated water is available."

Application 49827 was timely protested by David B. Evans on the following grounds:<sup>1</sup>

"Protestant is the present owner of a prior right on the subject spring as evidenced by Certificate No. 555, issued under Permit No. 5026 to David F. Evans on June 23, 1921, for the appropriation 0.1 c.f.s. Protestant believes that entire amount of water available from this source is equal to or less than 0.1 c.f.s.; therefore there is no unappropriated water available at this source."

**FINDINGS OF FACT**

I.

After proper notice to all parties, a hearing was held before the State Engineer in Reno, Nevada, on April 9, 1987, at which time the Applicant under Application 49793, represented by counsel, and the other applicants and protestants appeared in person.<sup>2</sup>

II.

A representative from the Nevada Department of Wildlife reiterated the concerns of the agency in approval of all the applications at issue. Cold Springs and/or Streib Springs were major watering points in a corridor for migration of 500-700 deer each year, the critical time being in November and early May. The applications would exhaust meager water flows and would allow for residential development that would interrupt the migration of the deer herd.

-----  
<sup>2</sup> Transcript of April 9, 1987, hearing is a public record in the office of the State Engineer.

III.

Representatives of the Evans Ranch as protestant to 49826 and 49827 raised the point that both Cold Spring and Streib Spring were located in different 40 acre subdivisions on the original surveys back in the early 1900's. The current surveys reflected an apparent error but the parties agreed that there was only one Streib Spring, and it is the source of existing certificated rights.

IV.

The following water rights and claim of vested right are of record for "Richard" Cold Springs, "Evans" Cold Springs and Streib Springs.<sup>1</sup>

"RICHARD" COLD SPRINGS

Claim of vested right No. 04225 was filed on October 29, 1984, by Ruth D. Mathews for 0.5 c.f.s. of water from Cold Springs for stockwater purposes. The point of diversion and place of use was given as within the SW1/4 NE1/4 Section 4, T.21N., R.18E., M.D.B.&M. A priority date of "prior to 1905" is claimed.

Application 41881 was filed on July 25, 1980, by Donnell J. Richards, Virginia Richards and Donna Howell and a subsequent permit was issued to appropriate 1.0 c.f.s. of water from Cold Springs for irrigation of 160 acres of land within the S1/2 NW1/4, SW1/4 NE1/4, NW1/4 SE1/4 Section 16, T.21N., R.18E., M.D.B.&M. The point of diversion was given as within the SW1/4 NE1/4 Section 4, T.21N., R.18E., M.D.B.&M.

"EVANS" COLD SPRINGS

Application 4762 was filed on December 8, 1917, by Paris F. Johnson and a subsequent permit was issued for 1.5 c.f.s. of water from Cold Springs to be used for irrigation and domestic purposes. The point of diversion was given as within the SE1/4 NE1/4 Section 4, T.21N., R.18E., M.D.B.&M. Certificate 463 was issued on May 27, 1921, for 0.27 c.f.s. of water to irrigate 27 acres of land located within the NE1/4 SE1/4, SE1/4 SE/4 Section 4, T.21N., R.18E., M.D.B.&M. The current owner of record is David F. Evans.

STREIB SPRING (UNNAMED SPRING)

Application 5026 was filed on April 26, 1918, by P. U. Streib and a subsequent permit was issued for 0.1 c.f.s. of water from an unnamed (Streib) spring to be used for irrigation, stock and domestic purposes. The point of diversion was given as within the SW1/4 SE1/4 Section 4, T.21N., R.18E., M.D.B.&M. Certificate 555 was issued on May 27, 1921, for 0.1 c.f.s. of water to be used for irrigation and domestic purposes on 10 acres of land located within the SE1/4 SE1/4 Section 4, T.21N., R.18E., M.D.B.&M. The current owner of record is David F. Evans.

Application 17309 was filed on June 20, 1957, by E. M. Evans and a subsequent permit was issued for 0.12 c.f.s. of water from an unnamed spring to be used for stockwater and irrigation purposes. The point of diversion was given as within the SW1/4 Section 4, T.21N., R.18E., M.D.B.&M. Certificate 8263 was issued on April 12, 1974, for 0.1115 c.f.s. to be used to water 450 cattle and 10 horses.

V.

The unnamed spring as source of water under Permit 17309, sometimes known as Streib Spring, was measured at 0.0144 c.f.s. on February 15, 1974.<sup>3</sup>

VI.

"Evans" Cold Spring was estimated to flow at 5.0 gallons per minute or 0.011 c.f.s.<sup>4</sup>

VII.

"Richards" Cold Spring was estimated to flow at 75.0 gallons per minute or 0.167 c.f.s.<sup>5</sup>

VIII.

NRS 533.367 provides the requirement to insure access of wildlife to water sources it customarily uses. Before a person may obtain a right to the use of the water from a spring or water which has seeped to the surface of the ground, he must insure 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.<sup>6</sup>

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:<sup>7</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.

-----  
<sup>3</sup> Proof of Beneficial Use and Protest of Lester James Larson filed under Permit 17309 are public record in the office of the State Engineer.

<sup>4</sup> See transcript of the public administrative hearing, April 17, 1986, pp. 33-34.

<sup>5</sup> See transcript of the public administrative hearing, April 17, 1986, p. 43.

<sup>6</sup> NRS 533.325.

<sup>7</sup> NRS 533.370(3).

III.

Approval of Applications 49793, 49826 and 49827 would allow additional diversion of water from spring sources which already have certificated and permitted rights in excess of their estimated flows. The State Engineer therefore concludes that the granting of Applications 49793, 49826 and 49827 would conflict with and impair existing rights.

RULING

The protests to Applications 49793, 49826 and 49827 are hereby upheld and Applications 49793, 49826 and 49827 are hereby denied on the grounds that they would conflict with and impair existing rights on the respective sources and would be detrimental to the public interest.

Respectfully submitted,

  
PETER G. MORROS  
State Engineer

PGM/GC/bl

Dated this 4th day of  
December, 1987.