

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 50933)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF EGAN CREEK IN STEPTOE)
VALLEY, WHITEPINE COUNTY, NEVADA.)

RULING

GENERAL

Application 50933 was filed on May 14, 1987, by David A. Carter to appropriate 1.0 c.f.s. of water from Egan Creek for mining, milling and domestic purposes within the S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ Section 13, T.23N., R.62E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 13, T.23N., R.62E., M.D.B.&M.¹

FINDINGS OF FACT

I.

The point of diversion described under the subject Application is upstream on the source (Egan Creek) from the three points of diversion described under the existing decreed rights.²

II.

The only other appropriations of record in the vicinity of the source are Permits 35730 and 43625 which were issued for "developed" water from San Jose Tunnel.³

III.

Proof 01136 is the only determined right issued under the Egan Creek Decree for 1.257 c.f.s. of water that is used for irrigation, stockwatering and domestic purposes. The irrigation season was determined to be from April 1 to September 30 of each year.

Section VIII. of the Decree states:

"that no person or persons holding a right of appropriation not herein vested is entitled to receive any water from Egan Creek and its tributaries to the detriment of the rights herein designated."⁴

IV.

There is evidence in the record to indicate that approval of the subject Application would not be in the public interest.⁵

1 Application 50933 us a public record on file in the office of the State Engineer.

2 Judgement and Decree - Egan Creek and its tributaries Seventh Judicial District Court of Nevada, No. 6715, January, 1956.

3 Permits 35730 and 43625 are public records on file in the office of the State Engineer; Cardelli v. Comstock Tunnel Co. 26 NEV 295; Ripley v. Park Center Land and Water Co. 40 COLO 129 90 P.75 (1907).Developed water implies water is not part of the natural water courses. This water is not subject to prior appropriation by owners of senior water rights on the stream.

4 See footnote 3.

V.

The State Engineer finds that there is no unappropriated water at the source and that granting of the subject Application would interfere with or impair existing rights.

CONCLUSIONS

I.

The State Engineer has jurisdiction⁶ of the parties and the subject matter of this action.

II.

The State Engineer is prohibited by law⁷ from granting a permit under an application to appropriate the public waters where:

- 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.

From the evidence and information available, the proposed source of water is fully appropriated during the irrigation season under the Egan Creek Decree. Therefore, approval of said Application would interfere with existing rights and would not be in the public interest.

5 State Engineer's Ruling No. 3101 is a public record on file in the office of the State Engineer.

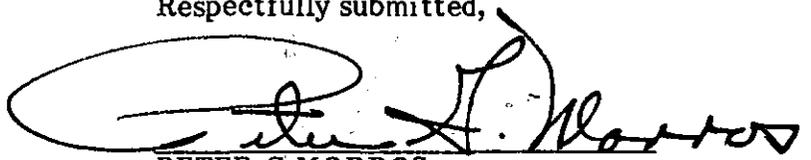
6 NRS 533.325

7 NRS 533.370 Subsection 3.

RULING

Application 50933 is hereby denied on the grounds that granting thereof would adversely affect existing rights and would therefore be detrimental to the public interest.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter G. Morros", is written over a horizontal line. The signature is stylized and cursive.

PETER G. MORROS
State Engineer

PGM/GC/bk

Dated this 4th day of
February, 1988.