

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 52336)
FILED TO APPROPRIATE WATER FROM)
McEWEN CREEK, WASHOE VALLEY, WASHOE)
COUNTY, NEVADA.)

RULING

GENERAL

I.

Application 52336 was filed on July 20, 1988, by Julian and Joanna Smith to appropriate 1.0 c.f.s. of water from McEwen Creek for irrigation purposes on 29.4 acres within the SW $\frac{1}{4}$ SW $\frac{1}{4}$; and SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25; NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 36, both T.16N., R.19E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, T.16N., R.19E., M.D.B.&M.¹

II.

The application was advertised for the statutory period and subsequently protested by the Nevada Division of State Parks on the following grounds:

"Approval of Application 52336 will permit the applicants to divert water from McEwen Creek, a tributary of Washoe Lake, and will interfere with prior existing water rights of protestant under Certificate Record Number 11633."

and further protested by the Truckee-Carson Irrigation District on the following grounds:

"This application will tend to adversely affect adjacent and downstream adjudicated surface waters since the diversion will consumptively use water which historically returns to Washoe Lake."¹

¹ Public records in the office of the State Engineer.

FINDINGS OF FACT

I.

The head waters of McEwen Creek originate in the Carson Range at an elevation of approximately 7,800 feet in the vicinity of Hobart Creek Reservoir. The creek flows northeasterly down Sawmill Canyon for approximately 3 miles where it is used to irrigate fields in the South end of Washoe Valley immediately north of Lakeview Summit. McEwen Creek is fed by numerous springs and melting snow, having a relatively high spring runoff and it usually dries up in July and August.²

II.

List Cattle Company is decreed the right to use 2.481 c.f.s. and 438.55 acre-feet from McEwen Creek for domestic use and the irrigation of 99.23 acres.³

III.

Any excess or unused portion of McEwen Creek by the decreed owners flows easterly under U.S. 395 and then turns north and flows into Washoe Lake.⁴

IV.

The Truckee River Decree speaks to the unappropriated waters and surplus waters flowing into Washoe Lake and Little Washoe Lake from the streams arising in the mountains west and southwest of Washoe Valley as having been appropriated in 1864 when they placed a wooden dam in the Washoe Lake outlet and began to store water.⁵

² Findings of Fact III Final Decree, In the Matter of the Determination of the Relative Rights in and to the Waters of McEwen Creek and its tributaries in Washoe County, State of Nevada, Civil No. 293400, Second Judicial District Court State of Nevada, August 6, 1974.

³ See Claim No. 02751 Final Decree, In the Matter of the Determination of the Relative Rights in and to the Waters of McEwen Creek and its Tributaries in Washoe County, State of Nevada, Civil No. 293400 Second Judicial District Court State of Nevada, August 6, 1974.

⁴ Information and records in the office of the State Engineer.

⁵ See paragraph 3, pg 75 Final Decree, U.S. vs. Orr Water Ditch Company, et al., Docket No. A-3, U.S. District Court District of Nevada under heading of Washoe Lake and tributaries.

V.

Share holders in the Washoe Lake & Reservoir Company under various priority dates have the right to store water in Washoe Lake sufficient to irrigate 3,110 acres.⁶

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.⁷

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁸

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

III.

The State Engineer concludes that the approval of Application 52336 would interfere with and impair existing rights set out in the Truckee River Decree.

⁶ See Claims 660 through 670 Truckee River Final Decree.

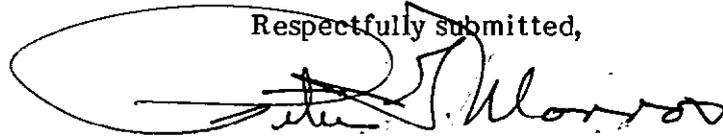
⁷ NRS Chapter 533.

⁸ NRS Chapter 533.370.

RULING

The protests to Application 52336 are hereby upheld and Application 52336 is hereby denied on the grounds that to approve said application would impair or otherwise conflict with existing decreed rights.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter G. Morros", is written over a large, hand-drawn oval. The signature is fluid and cursive.

PETER G. MORROS
State Engineer

PGM/RMT/bk

Dated this 26th day of
April, 1989.