

IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION 23306)
FILED TO APPROPRIATE THE WATERS OF)
BEATTY SPRINGS WITHIN THE OASIS)
VALLEY HYDROGRAPHIC BASIN (228),)
NYE COUNTY, NEVADA.)

RULING

#5309

GENERAL

I.

Application 23306 was filed on August 10, 1966, by The A. Revert Trust by Arthur F. Revert to appropriate 4.0 cubic feet per second (cfs) (less that already owned by the Applicant as a vested water right) of the water of Revert Springs a.k.a. Beatty Springs for irrigation and domestic purposes within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, and SW $\frac{1}{4}$ of Section 5, a portion of the NE $\frac{1}{4}$ of Section 7, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8, T.12S., R.47E., SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, T.11S., R.47E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5, T.12S., R.47E., M.D.B.&M.¹ The application indicates that approximately 400 acres of land would be irrigated, that 100 head of horses and cattle would be watered, and that "in the alternative, if the water is needed for domestic use as the source of water for the inhabitants of Beatty, Nevada, a portion thereof might be used for that purpose."²

II.

Application 23306 was timely protested by Clara Alberta Ray and Theodore T. Ray on the following grounds:

That on the 30th day of June, 1966, George W. Hennen, State Engineer, by Roland D. Westergard, Assistant State Engineer, approved protestant Application Serial No. 21570 to appropriate 5.0 second feet of water from the Beatty Municipal Springs, sometimes known as Revert Springs, and therefor protestants allege that there is

¹ File No. 23306, official records in the Office of the State Engineer.

² Ibid.

now no unappropriated water at the source of the proposed appropriation in application Serial No. 23306.

FINDINGS OF FACT

I.

By letter dated January 28, 2003, the A. Revert Trust was contacted by the Office of the State Engineer through its legal counsel of record, and inquiry was made as to whether the applicant wished to pursue Application 23306.¹ The State Engineer finds that after several discussions, which clarified that no adjudication had taken place as to the vested water right claim, the applicant decided to pursue Application 23306 with the claim of vested water right remaining on file.

II.

Nevada Revised Statute § 533.330 provides that an application cannot be filed for more than one purpose, but individual domestic use may be included in any application with the other use named. The State Engineer finds this is an application for irrigation use with incidental domestic use and cannot be used for the stockwatering purposes listed or for the domestic uses of the inhabitants of Beatty, Nevada, as indicated in the remarks section of the application.

III.

Some history is warranted as to this application and the litigation that took place between the Applicant and Protestants. On October 7, 1963, Clara and Theodore Ray filed Application 21570 on Revert Springs (a.k.a. Beatty Springs) requesting an appropriation of 5.0 cfs for municipal and domestic purposes indicating that the application was submitted for the purpose of obtaining a source of water supply for the Rays and other 2½-acre lots adjacent to the Beatty Water & Sanitation District and for the users of the Beatty Water & Sanitation District. Application 21570 was protested by Arthur F. Revert, Robert A. Revert and Norman L. Revert, individually, and as trustees of the A. Revert Trust, alleging the water was not public water open to

appropriation, because they owned all the water by having a vested water right to said water, and that the applicants had not shown how they would put the water to beneficial use.

On January 18, 1966, the State Engineer issued State Engineer's Ruling No. 832. In that ruling, he indicated that there was no question that prior to 1905 a man called "Old Man Beatty" had squatted on the land on which Beatty Springs is located, and while he was in squatters possession, there was no doubt he initiated a vested right on the spring in some magnitude. The State Engineer indicated that from the evidence there was some indication of a magnitude of the use; however, for the purpose of the ruling, it was not necessary to pursue this further.³ In State Engineer's Ruling No. 832, the State Engineer ultimately decided that the water right had been abandoned and that it had reverted to the public, and therefore, was available for appropriation under Application 21570.

The Reverts appealed the State Engineer's decision in Ruling No. 832 and ultimately the Nevada Supreme Court held that the Reverts had acquired a vested right of some magnitude in the use of the water flowing from Beatty Springs, and remanded the matter to the State Engineer for a determination of the Revert's claim that they had acquired the right to the spring through adverse possession.

An administrative hearing was held in October 1980, and in July 1981 the State Engineer issued State Engineer's Ruling No. 2692, which held that the evidence presented did not establish a water right by adverse possession; therefore, the water was still subject to appropriation under Application 21570.⁴

³ State Engineer's Ruling No. 832, dated January 18, 1966, official records in the Office of the State Engineer.

⁴ State Engineer's Ruling No. 2692, dated July 29, 1981, official records in the Office of the State Engineer.

The Reverts again appealed and on August 20, 1986, the 5th Judicial District Court of the State of Nevada held that the Reverts had established the validity of their protest to the Rays' application and had met their burden in attacking the State Engineer's decision and granted the Petitioners' Petition for Judicial Review, and reversed the State Engineer's decision of July 29, 1981, and instructed the State Engineer to reject Application 21570 on the grounds that all the water of Beatty Springs was owned by the Reverts.

On September 23, 1986, the State Engineer filed a Motion to Amend Judgment arguing that there has been no judicial or administrative determination on the limit and extent of the water rights, which are subject of the adverse possession claim and that the judgment was contrary to law; that the limit and extent of a claim to a vested right can only be determined through the statutory adjudication process. After briefing was completed on the motion, a letter dated November 13, 1986, from Reverts' legal counsel to the Deputy Attorney General indicates that the parties came to an agreement as to the Motion to Amend Judgment striking that portion that says the Reverts own all the water of Beatty Springs and that the Reverts agreed to succeed by adverse possession to whatever right "Old Man Beatty" had in the waters from Beatty Springs prior to March 31, 1905. The Reverts would then file a claim of vested right, request an adjudication thereof, during which process the State Engineer would not grant any applications for appropriation until the adjudication had been completed. The letter goes on to indicate that the Rays' application would then be subject to prior right if any additional water was available in the spring to support Permit 21570.

On February 5, 1987, the Reverts filed Proof V-04586 pursuant to which they claimed a vested water right for the irrigation of 80 acres in the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 5, T.12S, R.47E., 35 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T.12S, R.47E., 25 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$

of Section 7, T.12S, R.47E., 25 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T.12S, R.47E., and 40 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8, T.12S, R.47E., for a total of 205 acres. They further claimed use by the Town of Beatty in 1904. They claimed a continuous flow of 5.0 cfs for the irrigation of 205 acres of land. However, no petition for adjudication for the water source was ever filed and the Office of the State Engineer did not initiate an adjudication.

Following the activities mentioned above, on April 10, 1987, the Rays' Permit 21570 was cancelled and no appeal was taken from that cancellation. Therefore, with the Rays' water right permit no longer being in existence, the State Engineer finds the grounds of the Protestants' protest to Application 23306 are no longer valid. The State Engineer finds that Application 23306 filed by The A. Revert Trust is the next application in line for consideration on Beatty Springs a.k.a. Revert Springs.

IV.

The State Engineer finds that since no adjudication of the claim of vested water right filed pursuant to Proof V-04586 has taken place, there remains an unadjudicated claim of vested right by the A. Revert Trust on the same source of water as requested for appropriation by the A. Revert Trust under Application 23306. The State Engineer finds Application 23306 requested the appropriation of 4.0 cfs, less that already owned by the applicant under its claim of vested water right.

V.

A May 6, 1965, memo in File No. 21570 (the Rays' water right application) indicated that the then State Engineer wanted a field investigation performed to determine the quantity of water emanating as spring discharge.⁵ On May 11, 1965, Larry Reynolds, Hydraulic Engineer for the Las Vegas Branch Office, performed said field investigation to measure the water flowing from two

⁵ File Nos. 21570 and 23306, official records in the Office of the State Engineer.

pipelines. The field investigation indicates that the south pipeline flowed 66 gpm and the north pipeline flowed 290 gpm for a total of 356 gpm, which converts to 0.79 cubic feet per second or 574 acre-feet annually. The report also noted that there was water running from other seeps and holes in the area, which was not running in the pipelines, but the flow was not possible to ascertain because of the small amount running in each stream, but collectively was estimated to be approximately 0.50 cubic feet per second, which converts to approximately 362 acre-feet annually for a total for the spring area of 1.29 cubic feet per second, not to exceed 934 acre-feet annually.

Due to the amount of time that had passed since the last field investigation, the present State Engineer requested staff from the Southern Nevada Branch Office conduct a new field investigation, which was performed on May 29, 2003. The field investigation notes that the historic collection boxes were located with two 8-inch pipes extending from said collection boxes; however, there was no flow in the pipes or signs of recent use. The field investigation notes that no single source for Beatty Springs/Revert Springs can be identified, but rather, the area is best described as a collection of seeps and springs overgrown by meadow grass and cattails. The area was heavily overgrown and due to the dispersion of the seeps and springs and overgrowth a measurement could not be obtained in the headwaters of the spring. The best measuring point was found to be from a culvert, which collected the flow on the east side of Highway 95, which then diverted the flow to the west under the Highway. The flow through the culvert was determined to be 0.205 cubic feet per second or approximately 123.5 gallons per minute, or approximately 199 acre-feet annually. It was noted that the substantial overgrowth within the area of the springs consumes flow from the springs via evapotranspiration. The field investigators concluded that if the collection boxes were reconditioned and the overgrowth

and cattails removed, the measured flow from Beatty Springs/Revert Springs would undoubtedly increase. Therefore, the flow of the springs was calculated as being 0.50 cfs.

The State Engineer finds there is insufficient evidence to support granting the water right for the amount requested as there is no evidence that Beatty Springs/Revert Springs flows 4.0 cubic feet per second. The State Engineer finds taking both field investigations into consideration it is reasonable to believe Beatty Springs/Revert Springs collectively flow 0.75 cfs. The State Engineer finds since the vested right claimant and the applicant are one in the same there is no reason not to proceed with Application 23306.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the persons and subject matter of this action and determination.⁶

II.

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

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

⁶ NRS chapter 533.

⁷ NRS chapter 533.370(3).

III.

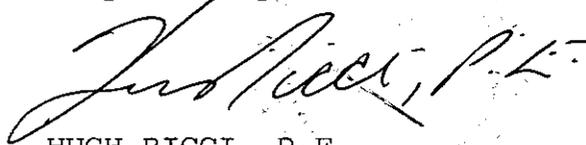
The State Engineer concludes, because the Applicant is the same entity as the vested right claimant, that the application can be acted on. The State Engineer concludes that because the Applicant is the same entity as the vested right claimant that the granting of the application will not conflict with the Applicant's vested right claim. The State Engineer concludes that there is no evidence the proposed use will conflict with protectible interests in existing domestic wells as set forth in NRS § 533.024 or would threaten to prove detrimental to the public interest.

RULING

The protest to Application 23306 is hereby overruled and Application 23306 approved in the amount of 0.75 cubic feet per second for domestic purposes as defined in Nevada Revised Statute § 534.013 and the irrigation of a maximum of 108 acres of land within the described place of use subject to:

1. the payment of the statutory permit fees;
2. all other existing rights; and,
3. the installation of a suitable measuring device or devices.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/SJT/jm

Dated this 20th day of
November, 2003.