

IN THE MATTER OF APPLICATIONS 22285 )  
AND 22286 FILED ON OCTOBER 19, 1964, )  
BY THEODORE H. BERRY TO CHANGE THE )  
PLACE OF USE OF WATERS OF AN UNDER- )  
GROUND SOURCE HERETOFORE APPROPRIATED )  
UNDER PERMITS 17293 AND 10545 LOCATED )  
IN PERSHING COUNTY, NEVADA )

R U L I N G

General:

Application 22286 was filed on October 19, 1964, by Theodore H. Berry to change the place of use of 53 gpm of water heretofore appropriated under Permit 10545 Certificate 3327. The point of diversion is described as within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 34, T. 29 N., R. 34 E., M.D.B.&M., and the place of use as the SE $\frac{1}{4}$  SW $\frac{1}{4}$  Sec. 15, T. 28 N., R. 34 E., M.D.B.&M. Application 22285 was filed on October 19, 1964, by Theodore H. Berry to change the place of use of 3.0 c.f.s. of water heretofore appropriated under Permit 17293. The point of diversion is described as within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 34, T. 29 N., R. 34 E., M.D.B.&M. and the place of use within SE $\frac{1}{4}$  SW $\frac{1}{4}$  Sec. 15, T. 28 N., R. 34 E., M.D.B.&M.

The above applications were protested on February 12, 1965, by the Humboldt Quicksilver Corporation and on February 15, 1965, by the Wabash Mine.

The protests were based on the removal of water from one drainage basin into another, which in effect, would deprive present water users within the Spring Valley area of water and render a hardship on the operation of the mines and also be detrimental to some stockwatering operations.

A field investigation on the above matter was held on March 29, 1965.

Opinion:

The field examination and analysis of topographic maps show that both Spring Valley and Sage Hen Flat, where the proposed place of use lies, are tributary to Buena Vista Valley, therefore, the proposed change would not remove water from one basin to another. The protestants do not have any existing water rights of record in the State Engineer's office, therefore, the proposed change would not effect existing rights. The possibility of some vested stockwatering rights does exist, however, the initiation of the use of the water in Spring Valley by mining operations can only be traced back to 1941, from information taken from the protests and obtained in the field. This would not support a claim of vested right for mining and milling purposes.

RULING

The protests to the granting of Applications 22286 and 22285 are herewith overruled on the grounds that the granting of these applications will not impair the value of existing rights or otherwise be detrimental to the public welfare. Permits will be issued for the proposed change subject to existing rights.

Nothing in this ruling shall be taken to grant any rights of ingress and egress to the applicant, Theodore H. Berry.

Respectfully submitted,

GEORGE W. HENNEN  
State Engineer

By: *Roland D. Westergard*  
Roland D. Westergard  
Assistant State Engineer

Dated this 30th day of  
April, 1965

PGM:lh