

IN THE MATTER OF APPLICATION 25294 )  
FILED BY HENRY D. OTT ON SEPTEMBER 19, )  
1969, TO APPROPRIATE WATER FROM BARBER )  
CANYON CREEK IN PERSHING COUNTY )

R U L I N G

GENERAL:

72 Henry D. Ott filed Application 25294 on September 19, 1969, for permission to appropriate 2.50 c.f.s. of the waters of Barber Canyon Creek for Mining and Domestic purposes. The proposed point of diversion is within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  Section 23, T. 33 N., R. 36 E. The proposed place of use is described as all or portions of Sections 23, 24, 26, 27, 28, 33, 34 and 35, T. 32 N., R. 36 E., M.D.B.&M; and all of Sections 3 and 4, T. 32 N., R. 36 E., M.D.B.&M.

A protest against Application 25294 was filed on February 16, 1970 by Star Sheep Co., Inc. The protest recites that the Star Sheep Co., Inc. by itself and through its predecessors in interest, owns and has vested rights in and to all the waters of Barber Canyon Creek, that it is the sole appropriator on the stream system, that there are no excess waters subject to appropriation, and that if a permit is granted, the protestant will lose valuable property rights, of, in, and to the waters of Barber Canyon Creek.

A field investigation was held in the matter of Application 25294 on June 4, 1970. The source is the subject of Proof of Appropriation 0721, under which Certificate 548 was issued on May 27, 1908. The certificate was issued for all of the flow of Barber Canyon for the irrigation of 2 $\frac{1}{2}$  acres in the NE $\frac{1}{4}$  of Section 26, T. 33 N., R. 36 E., M.D.B.&M.; and for Placer Mining in the NW $\frac{1}{4}$  of the said Section 26. The owner of record is the Tiptop Water Co. At present, there is no use of water as described in the proof or certificate.

Certificate 6629, issued under Permit 20587 is for the appropriation of 0.081 c.f.s. of water from Hidden Canyon, a tributary to Barber Canyon. The point of diversion is within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  Section 13, T. 13 N., R. 37 E., M.D.B.&M., about two miles upstream from the proposed point of diversion stated in Application 25294. Certificate 6629 is owned by Mary Clough and Max Magnussen.

The Bureau of Land Management has recently installed a stock-watering trough at the source, a standard marker reading, "Earl Spring: Project 4064: 1970: SW $\frac{1}{4}$ :SE $\frac{1}{4}$ : Sec. 23", has been installed.

The protestant does not own any water rights of record for the source described. A letter from the Bureau of Land Management states that the range in the area of the proposed appropriation is jointly used by John N. Thacker, Dr. Paul Knoop, Coyote Creek Ranch, and Star Sheep Company, the protestant.

The applicant, Mr. Ott, has stated by letter dated August 30, 1970, that he has no objection to use of the proposed source for stock watering purposes.

RULING

The protest to Application 25294 is overruled, and a permit will be issued, subject to existing rights, upon payment of the statutory permit fees.

Respectfully submitted,

  
Roland D. Westergard  
State Engineer

RDW:JCP:sdb

Dated this 19th day of  
October, 1970