

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 43946)
FILED BY W. B. KOHLMOOS TO)
APPROPRIATE WATERS FROM WILDCATE)
CANYON CREEK IN BIG SMOKY VALLEY,)
NYE COUNTY, NEVADA.)

RULING

GENERAL

Application 43946 was filed on June 25, 1981, by W. B. Kohlmoos to appropriate 1.0 c.f.s. of water from Wildcat Canyon Creek for irrigation and domestic purposes on 20 acres of land within a portion of the S1/2 SW1/4 Section 1 and a portion of the N1/2 NW1/4 Section 12, T.13N., R.42E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NE1/4 Section 11, T.13N., R.42E., M.D.B.&M. The period of use is from January 1st to December 31st of each year.¹

FINDINGS OF FACT

I.

Wildcat Canyon Creek, located in Big Smoky Valley, is a perennial stream fed by snow accumulation from the Toiyabe Mountain Range to the west.²

II.

The existing certificated water rights of record for Wildcat Canyon Creek in Big Smoky Valley is as follows:³

Permit 16560 (Certificate 4813) was issued for 0.50 c.f.s. to irrigate 153.9 acres of ground from April 1st to November 1st of each year. The source of water is Clay and Wildcat Canyons. The owner of record is Millett Ranch, Inc. The point of diversion is described as being within the NE1/4 SE1/4 Section 11, T.13N., R.42E., M.D.B.&M.

III.

The proposed point of diversion for Application 43946 is approximately one quarter mile upstream from the point of diversion of Certificate 4813.

¹ Public record in the office of the State Engineer filed under Application 43946.

² U.S.G.S. topographic map, 15 minute series, entitled "Millett Ranch, Nevada", (1956).

³ Certificate 4813 is a public record on file in the office of the State Engineer.

IV.

It appears, as a result of examination of office records, there may be claims of vested rights appurtenant to the place of use of Certificate 4813 from Wildcat and Clay Canyon streams. However, no claims of vested rights have been filed to date.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.⁴

II.

The State Engineer is prohibited by law from granting a permit where:

- A. there is no unappropriated water in 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.⁵

III.

Approval of Application 43946 would allow diversion of a substantial amount of water upstream and thus would interfere with existing rights.

RULING

Application 43946 is hereby denied on the grounds that it would conflict with and impair existing rights on the source and would be detrimental to the public interest.

Respectfully submitted



Peter G. Morros
State Engineer

PGM/GC/bl

Dated this 6th day of

November, 1984.

⁴ NRS 533.325.

⁵ NRS 533.370, subsection 3.