

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 38619)
AND 40200 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF UNNAMED SPRINGS IN)
SNAKE VALLEY, WHITE PINE COUNTY,)
NEVADA.)

RULING

GENERAL

Application 38619 was filed on July 20, 1979, by Richard K. Hatch to appropriate 1.0 c.f.s. of water from an unnamed spring for mining, milling and domestic purposes within portions of the SW1/4 NW1/4, NW1/4 SW1/4, NE1/4 SW1/4 Section 35, T.16N., R.70E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NW1/4 Section 35, T.16N., R.70E., M.D.B.&M.¹

Application 40200 was filed on January 4, 1980, by Richard K. Hatch to appropriate 1.0 c.f.s. of water from an unnamed spring for mining, milling and domestic purposes within portions of the SW1/4 NW1/4, NW1/4 SW1/4, NE1/4 SW1/4 Section 35, T.16N., R.70E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NW1/4 Section 35, T.16N., R.70E., M.D.B.&M.¹

Applications 38619 and 40200 were timely protested by Clarence C. Probst on the following grounds:²

"Protestant has been advised there is no unappropriated water remaining in the area and that said applications if granted would interfere with protestants vested water rights."

The protestant requested denial of Applications 38619 and 40200.

A formal field investigation was conducted on June 4, 1980, to gather additional information concerning Applications 38619 and 40200 and to attempt to resolve the protests.³

It was determined that the unnamed spring for Application 38619 was tributary to Hendrys Creek and that it was flowing from .1 to .2 c.f.s. of water at the time of the investigation.

¹ Public record in the office of the State Engineer under Applications 38619 and 40200.

² Copies of the protests are public record filed under Applications 38619 and 40200 in the office of the State Engineer.

³ Copies of the field investigation report are public record filed under Applications 38619 and 40200 in the office of the State Engineer.

The spring site for Application 40200 was a series of wet spots approximately 50 feet from the source of Application 38619 and it was not considered to be tributary to Hendrys Creek.

Mr. Probst's point of diversion for vested right 02654 is located about 500 feet downstream of Application 38619. The water is conveyed through a cement ditch to the ranch. According to Mr. Probst, without the lines in the ditch, the water would not reach the ranch during dryer seasons.

FINDINGS OF FACT

I.

The proposed source of water for Application 38619 is a spring that is tributary to Hendrys Creek upstream from all other points of diversion of claims of record.

II.

The proposed source of water for Application 40200 is a series of wet spots located near the source of Application 38619 that does not contribute surface flows to Hendrys Creek.

III.

Existing claims of vested rights of record for Hendrys Creek are as follows:

- A. Proof 02654 was filed for irrigation of 216.572 acres of land in Utah from a point of diversion on Hendrys Creek in Nevada.⁴ The original claim is in the name of J. D. Hill who has since sold this claim to Clarence Probst.⁵
- B. A Utah Dilligence Claim No. 1967 was filed with the Utah State Engineer's Office for 1.0 g.f.s. of water from Hendrys Creek to irrigate 475 acres of land in Utah.⁶ The original claimant was J. D. Hill and it is now in the names of Arthur and Carol Cook.

IV.

NRS 533.367 provides the requirements to insure access of wildlife to water it customarily uses. Before a person may obtain a right to the use of the water from a spring or water which has seeped to the surface of the ground, he must insure that wildlife which customarily uses the water will have access to it. Evidence and information available to the State Engineer indicates that the sources of water under Applications 38619 and 40200 are minimumly sufficient to provide water for wildlife that frequent the area.

⁴ Proof 02654 is a public record on file in the office of the State Engineer.

⁵ Report of field investigation of December 11, 1980, filed under Application 38619 in the office of the State Engineer.

⁶ A copy of the Utah Dilligence Claim is a public record filed under Application 38619 in the office of the State Engineer.

CONCLUSIONS

I.

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

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.⁸

III.

The approval of Application 38619 would allow diversion of water upstream from all existing claims of vested rights of record on Hendrys Creek which has not been adjudicated.

IV.

The evidence and information available does not indicate there is adequate surface water available at the source of Application 40200 to provide for wildlife and for mining, milling and domestic purposes.

RULING

Application 38619 is hereby denied on the grounds that it would conflict with and impair existing rights on the source and be detrimental to the public interest.

Application 40200 is hereby denied on the grounds that there is an insufficient amount of water for the proposed use.

Respectfully submitted



Peter G. Morros
State Engineer

PGM/GC/bl

Dated this 5th day of

December, 1984.

⁷ NRS 533.325.

⁸ NRS 533.370, subsection 3.