

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 35730 )  
FILED BY CLIFFORD HERMAN TO )  
APPROPRIATE WATER FROM EGAN MINE )  
(SAN JOSE TUNNEL) IN STEPTOE VALLEY, )  
WHITE PINE COUNTY, NEVADA. )

RULING

GENERAL

Application 35730 was filed on August 11, 1978, by Clifford Herman to appropriate 3.0 c.f.s. of water from Egan Mine (San Jose Tunnel) for mining, milling and domestic purposes within portions of the SE1/4 SE1/4 Section 11, SW1/4 SW1/4 Section 12, W1/2 NW1/4, SW1/4 NE1/4 Section 13 and the NE1/4 Section 14, T.23N., R.62E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NE1/4 Section 14, T.23N., R.62E., M.D.B.&M.<sup>1</sup>

Application 35730 was timely protested by Lenard Geiler on February 5, 1979, on the following grounds:<sup>1</sup>

"The above waters have been beneficially used by protestant and his predecessors in interest at the Cherry Creek Ranch prior to enactment of the water laws and additional withdrawal as contemplated by the above-mentioned application would be adverse to protestants vested rights, etc."

The protestant requested denial of Application 35730.

A field investigation was held on June 12, 1979, to attempt to resolve the protest and to gather additional information.<sup>2</sup>

The protestants, Lenard Geiler and Dave Carter, reiterated their opinion that the waters of Egan Mine (San Jose Tunnel) are tributary to the decreed waters of Egan Creek.

Richard Forman, representing the applicant, maintained that the water developed in the mine was incidental to the mining operation and that they were not under any obligation to provide water out of the tunnel.

At the time of the investigation, water was flowing at an estimated 1.5 c.f.s. from the mine entrance to Egan Creek Channel only a short distance away.

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<sup>1</sup> Public record in the office of the State Engineer under Application 35730.

<sup>2</sup> A copy of the field investigation conducted on June 12, 1979, is a public record on file in the office of the State Engineer.

A review of the record including the Judgment and Decree filed January 30, 1956, for Egan Creek by the State Engineer indicates that North Mountain Tunnel, otherwise known as Egan Mine (San Jose Tunnel), was rejected by the Court as tributary to Egan Creek although it had been considered as such by the State Engineer in the Final Order of Determination filed with the Court.<sup>3</sup>

### FINDINGS OF FACT

#### I.

The proposed point of diversion under Application 35730 is water developed from Egan Mine (San Jose Tunnel) located immediately north of Egan Creek.

#### II.

Egan Mine (San Jose Tunnel) was rejected as a tributary in the Final Decree of Egan Creek.

#### III.

Developed water implies water not part of natural water courses. Drainage from a mine tunnel provides a prime example. This water is subject to appropriation by any person with the interest of putting it to beneficial use. If the developed waters enter a natural stream as a result of mans activity, this water is not subject to prior appropriation by owners of senior rights on the stream.<sup>4</sup>

#### IV.

All underground waters within the boundaries of the State belong to the public and, subject to all existing rights to the use thereof, are subject to appropriation for beneficial use only under the laws of this State relative to the appropriation and use of water and not otherwise.<sup>5</sup>

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.<sup>6</sup>

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<sup>3</sup> Egan Creek Judgment and Decree, Seventh Judicial District Court of the State of Nevada in and for White Pine County, 1956, public record in the office of the State Engineer.

<sup>4</sup> Ripley v. Park Center Land and Water Co., 40 Colo. 129 90 P.75 (1907); Bidleman v. Short, 38 Nev. 150 Pac. 834 (1915).

<sup>5</sup> NRS 534.020.

<sup>6</sup> NRS 533.325.

II.

Application 35730 proposes to use water developed from Egan Mine (San Jose Tunnel) which is not tributary to the decreed waters of Egan Creek.

III.

All surface waters and underground waters within the State of Nevada are subject to appropriation under the State laws relating to appropriation.

**RULING**

The protest to Application 35730 is hereby overruled on the grounds that the source of water for said application is not tributary to or subject to the decreed rights on Egan Creek.

A permit will be issued for Application 35730 upon payment of the required statutory permit fees and subject to any existing rights on the source.

Respectfully submitted



Peter G. Morros  
State Engineer

PGM/GC/bl

Dated this 23rd day of  
January, 1985.