

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 42937,)
42943 AND 42944 FILED TO APPROPRIATE)
WATER FROM WATER CANYON, MUD AND)
BILLY POPE SPRINGS, RESPECTIVELY, IN)
STEPTOE VALLEY, WHITE PINE COUNTY,)
NEVADA.)

RULING

GENERAL

Application 42937 was filed on December 10, 1980, by John Krmptic to appropriate 0.2 c.f.s. of water from Water Canyon Spring for mining, milling and domestic purposes within portions of the SE1/4 NW1/4, SW1/4 NE1/4, NE1/4 SW1/4 and NW1/4 SE1/4 Section 9, T.20N., R.63E., M.D.B.&M., (unsurveyed). The point of diversion is described as being within the NW1/4 NW1/4 Section 9, T.20N., R.63E., M.D.B.&M.¹

Application 42943 was filed on December 10, 1980, by John Krmptic to appropriate 0.2 c.f.s. of water from Mud Spring for mining, milling and domestic purposes within the SE1/4 NW1/4, SW1/4 NE1/4, NE1/4 SW1/4 and NW1/4 SE1/4 Section 9, T.20N., R.63E., M.D.B.&M., (unsurveyed). The point of diversion is described as being within the SW1/4 NW1/4 Section 9, T.20N., R.63E., M.D.B.&M.¹

Application 42944 was filed on December 10, 1980, by John Krmptic to appropriate 0.2 c.f.s. of water from Billy Pope Spring for mining, milling and domestic purposes within the SE1/4 NW1/4, SW1/4 NE1/4, NE1/4 SW1/4 and NW1/4 SE1/4 Section 9, T.20N., R.63E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SE1/4 Section 5, T.20N., R.63E., M.D.B.&M., (unsurveyed).¹

FINDINGS OF FACT

I.

Proof of Appropriation 01417 was filed on August 4, 1915, by W.D. Campbell claiming a vested right for the appropriation of sufficient water to water 150 head of cattle and horses, initiated in 1880. The heading of Proof 01417 names Water Canyon Spring and Mud Spring as the sources of water, but in parenthesis states 3 springs. A map filed on November 26, 1915, in support of Proof 01417 shows three sources of water; namely, Water Canyon Spring, Mud Spring and Billy Pope Spring.

The map shows the point of diversion of Billy Pope Spring as being within the SW1/4 NW1/4 Section 5, of Water Canyon Spring within the SE1/4 SE1/4 Section 5, and of Mud Spring Within the SW1/4 NW1/4 Section 9, all in T.20N., R.20E., M.D.B.&M., (unsurveyed).

The current owner of record of Proof 01417 is Steptoe Ranch Co.¹

¹ Public record in the office of the State Engineer.

II.

Applications 42937, 42943 and 42944 were each protested on June 8, 1981, (42937), and May 21, 1981, (42943 and 42944) by Steptoe Ranch Co., Inc., on identical grounds as follows: "The granting of this application would conflict with existing water rights on this source and there is insufficient water on this source to handle existing rights, therefore there are no available waters for appropriation".¹

III.

Applications 40759, 40760 and 40761 were filed on February 27, 1980, by Ralph Campbell for permission to appropriate water from Water Canyon Spring, Billy Pope Spring and Mud Spring, respectively, for mining, milling and domestic purposes in White Pine County, Nevada.¹

IV.

Applications 40759, 40760 and 40761 were protested on July 11, 1980, by Steptoe Ranch Co., Inc., on identical grounds as Applications 42937, 42943 and 42944.¹

V.

A field investigation in the matter of Applications 40759, 40760 and 40761 was held on September 25, 1980. At the time of the investigation, Water Canyon Spring was estimated to be flowing at 10 gallons per minute, Billy Pope Spring was flowing at 10 gallons per hour, and Mud Spring was flowing at 1 gallon per hour.²

VI.

Applications 40759, 40760 and 40761 were denied on July 30, 1981, on the grounds that Application 40759 would conflict with existing rights on the source and that there is no unappropriated water available for Applications 40760 and 40761.³

VII.

A field investigation was held in the matter of Applications 42937, 42943 and 42944 on September 20, 1984.⁴

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.⁵

² Public record in the office of the State Engineer, see Report of Field Investigation No. 693.

³ Public record in the office of the State Engineer, see Ruling No. 2693.

¹ Public record in the office of the State Engineer, see Report of Field Investigation No. 737.

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 welfare.⁶

III.

Evidence in this office and the field investigations indicate that the water from the sources described in Applications 42937, 42943 and 42944 has been used beneficially for stockwatering purposes since prior to 1905.¹ Although the limit and extent of this right can only be finally determined in an adjudication proceeding in accordance with Chapter 533 of Nevada Revised Statutes, NRS 533.085(1) expressly prohibits the impairment of any vested rights. All the evidence of record in these proceedings indicates that Proof of Appropriation 01417 is valid.

IV.

Applications 42937, 42943 and 42944 seek to appropriate 89.77 gallons per minute from each spring or a total of 269.3 gallons per minute. The Water Canyon Spring flows only 10 gallons per minute, Billy Pope Spring flows 0.17 gallons per minute and Mud Spring flows 0.02 gallons per minute, for a total of 10.19 gallons per minute - some 259 gallons per minute less than the amount requested.

The evidence discloses there is insufficient water available to supply the diversion rate applied for in the subject applications.

V.

Although there may be a small amount of unappropriated water in Water Canyon Spring, evidence indicates it is nowhere near the amount applied for under Application 42937. To grant Application 42937 would tend to conflict with existing rights.

There is no unappropriated water either in Billy Pope Spring or Mud Spring. Therefore, it is concluded that granting Applications 42943 and 42944 would conflict with existing rights and that there is no unappropriated water in the sources described in Applications 42943 and 42944.

⁵ NRS 533.025 and NRS 533.030(1).

⁶ NRS 533.370(4).

RULING

The protests to Applications 42937, 42943 and 42944 are herewith upheld and Applications 42937, 42943 and 42944 are hereby denied on the grounds that the granting would conflict with existing rights and that there is no unappropriated water available at the source.

Respectfully submitted



Peter G. Morros
State Engineer

PGM/GT/bl

Dated this 23rd day of
January, 1985.