

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 48108)
AND 48109 FILED TO APPROPRIATE THE)
WATERS OF AN UNNAMED SPRING AND)
SEEPAGE FROM A TUNNEL IN LIDA VALLEY,)
ESMERALDA COUNTY, NEVADA.)

RULING

144

GENERAL

Application 48108 was filed on June 14, 1984, by Severina Seminario to appropriate 0.1 c.f.s. of water from a tunnel for mining, milling and domestic purposes within the SW1/4 SW1/4 Section 32, T.5S., R.41E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SW1/4 Section 32, T.5S., R.41E., M.D.B.&M.¹

Application 48109 was filed on June 14, 1984, by Severina Seminario to appropriate 0.1 c.f.s. of water from an unnamed spring for mining, milling and domestic purposes within the NE1/4 SW1/4 Section 33, T.5S., R.41E., M.D.B.&M. The point of diversion is described as being within the NE1/4 SW1/4 Section 33, T.5S., R.41E., M.D.B.&M.¹

Applications 48108 and 48109 were timely protested by Jack Vogt on October 1, 1984, on the following grounds:²

"The ranch has been using this water since approximately 1900."

The protestant requests the aforementioned applications be denied.

A field investigation was conducted on December 5, 1984, to attempt to resolve the protest and to gather additional information for the State Engineer.³

An inspection of the tunnel (Application 48108) revealed water backed up in the passage by a small berm, however, no channel was evident that could be measured.

The spring source for Application 48109 was measured at .125 gpm.

Jack Vogt, protestant, stated that both the water sources were very important watering holes for his cattle operation and had been for his predecessors since 1896. The flows had always been minimal but relatively stable according to Vogt. He has filed claims of vested right to support his protests.

¹ Public record in the office of the State Engineer under Applications 48108 and 48109.

² Copies of the protests filed on October 1, 1984, are public record on file with Applications 48108 and 48109 in the office of the State Engineer.

³ A copy of the field investigation conducted on December 5, 1984, is a public record filed with Applications 48108 and 48109 in the office of the State Engineer.

Mr. Lemieux, agent for Ms. Seminario, said that the applicant had gold claims in this area, however, she really needed water for domestic purposes.

FINDINGS OF FACT

I.

Proofs of Appropriation 04223 and 04224 were filed by Jack and Joan Vogt on October 24, 1984, for stockwatering purposes. The source of water for Proof 04223 and Application 48109 is the same as for Proof 04224 and Application 48108.⁵

II.

The field investigation disclosed very minimal flows (0.125 gpm) for the source of Application 48109 and only a small pool of water (not measured) for the source of Application 48108.

CONCLUSIONS

I.

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

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.⁷

III.

The evidence and information available does not indicate there is unappropriated water available for Applications 48108 and 48109.

⁵ Proofs of Appropriation 04223 and 04224 are public record on file in the office of the State Engineer.

⁶ NRS 533.325.

⁷ NRS 533.370, subsection 3.

RULING

Applications 48108 and 48109 are hereby denied on the grounds that there is no unappropriated water available at the respective sources and that approval of permits at these locations would interfere with existing rights.

Respectfully submitted



Peter G. Morros
State Engineer

PGM/GC/bl

Dated this 23rd day of
January, 1985.