

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 44282,)
44638, 46833 AND 47050 FILED TO)
APPROPRIATE WATER FROM TIGER CREEK)
AND ITS TRIBUTARIES IN DODGE FLAT,)
WASHOE COUNTY, NEVADA.)

RULING

GENERAL

Application 44282 was filed on August 12, 1981, by Lee S. Smith to appropriate 1.0 c.f.s. of water from an unnamed spring for mining and milling purposes within a portion of the SW1/4 SW1/4 Section 21, NW1/4 NW1/4 Section 28, and E1/2 NE1/4 NE1/4 Section 29, T.21N., R.23E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SW1/4 Section 21, T.21N., R.23E., M.D.B.&M.¹

Application 44638 was filed on October 15, 1981, by Lee S. Smith to appropriate 1.0 c.f.s. of water from Tiger Creek for mining, milling and domestic purposes within portions of the SW1/4 SW1/4 Section 21, NW1/4 NW1/4 Section 28, and E1/2 NE1/4 NE1/4 Section 29, T.21N., R.23E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SW1/4 Section 21, T.21N., R.23E., M.D.B.&M.¹

Application 46833 was filed on April 27, 1983, by Lee S. Smith to appropriate 1.0 c.f.s. of water from Tiger Spring for mining and domestic purposes within portions of the SW1/4 SW1/4 Section 21, NW1/4 NW1/4 Section 28, and E1/2 NE1/4 NE1/4 Section 29, T.21N., R.23E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SW1/4 Section 21, T.21N., R.23E., M.D.B.&M.¹

Application 47050 was filed on July 5, 1983, by Lee S. Smith to appropriate 1.0 c.f.s. of water from Tiger Creek for mining, milling and domestic purposes within portions of the SW1/4 SW1/4 Section 21, NW1/4 NW1/4 Section 28, and E1/2 NE1/4 NE1/4 Section 29, T.21N., R.23E., M.D.B.&M. The point of diversion is described as being within the SE1/4 NE1/4 Section 20, T.21N., R.23E., M.D.B.&M.¹

Applications 44282, 44638, 46833 and 47050 were timely protested by the Depaoli Brothers on the following grounds:²

"There is no unappropriated water on the source. The undersigned and their predecessors in interest have utilized the waters of Tiger Creek for the purpose of watering livestock since before 1905 and therefore have vested rights which cannot be impaired. Granting of these applications would impair the vested rights."

¹ Public record in the office of the State Engineer under Applications 44282, 44638, 46833 and 47050.

² Copies of the protests are public record on file in the office of the State Engineer under Applications 44282, 44638, 46833 and 47050.

The protestant requests said applications be denied.

A field investigation was conducted on December 13, 1984, to attempt to resolve the protests and to gather additional information for the State Engineer.³

The protestants indicated they would be filing proof of vested use for stockwater on Tiger Creek for up to 1500 head of cattle downstream of the proposed points of diversion for Applications 44282, 44638, 46833 and 47050. They were concerned that Mr. Smith wished to appropriate most, if not all, of the sources of Tiger Creek which would be moved away from the channel to be used in the mining operation.

Mr. Smith said it was not his intention to appropriate all of Tiger Creek, however, he intended to use up to 40 million gallons annually from the storage requested in Applications 46833 and 47050. He was willing to amend his applications downward to accommodate the cattle needs and allow access for the cattle from his proposed storage facilities. Mr. Smith compiled some flow data on Tiger Creek during 1983 that indicated a maximum of 43 million gallons annually.

The protestant responded that 1983 was an exceptional year and that the usual flows were about 10% of the 43 million gallons annually.

FINDINGS OF FACT

I.

Permit 10246, Certificate 2731, is an existing water right on Tiger Creek Springs in the name of Helen Fabian Falkin for .01 c.f.s. of water for mining and milling purposes. The point of diversion is approximately the same as Application 46833 which is the lowest downstream point of diversion of the four applications at issue.⁴

II.

Tiger Creek is a small perennial stream which originates in the Pah Rah Range and flows east to Dodge Flat. The source of water is from snow melt and several spring areas. During dry years, the stream may sink and raise again after it leaves the canyon.

III.

Claim of vested right, No. 04229, was filed on January 18, 1985, by the Depaoli Bros. for sufficient stockwater from Tiger Creek and its tributaries to water 1500 cattle. The points of diversion are given as within the SE1/4 NE1/4 Section 20, NW1/4 SW1/4, SE1/4 NE1/4 Section 21, T.21N., R.23E., M.D.B.&M., and includes the entire length of Tiger Creek.

³ Copies of the field investigation report are public record in the office of the State Engineer under Applications 44282, 44638, 46833 and 47050.

⁴ Certificate 2731 is a public record on file in the office of the State Engineer.

IV.

Flow estimates submitted by the applicant for Tiger Creek during calendar year 1983 do not reflect average or normal flows that may be expected in the stream over a period of years.⁵

V.

Stockwater under claim of vested right 04229 is diverted from Tiger Creek downstream on the alluvial fan in excess of two miles from the point of diversion of the application at issue.

CONCLUSIONS

I.

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

Sufficient flow in the head waters of Tiger Creek and its tributaries is needed to compensate for stream loss and still provide stockwater on the alluvial fan downstream for a distance of two or more miles.

IV.

Approval of Applications 44282, 44638, 46833 and 47050 would allow diversion of water upstream from the existing right of record and claim of vested right 04229 and would cause substantial decrease in primary sources of water for Tiger Creek.

⁵ Copies of flow estimates filed by the applicant are public record in the office of the State Engineer under Applications 44282, 44638, 46833 and 47050.

⁶ NRS 533.325.

⁷ NRS 533.370, subsection 3.

RULING

Applications 44282, 44638, 46833 and 47050 are hereby denied on the grounds that approval of said permits would conflict with and impair existing rights on the source and be detrimental to the public interest.

Respectfully submitted



Peter G. Morros
State Engineer

PGM/GC/bl

Dated this 5th day of
February, 1985.