

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 47404)
AND 47405 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF SIX MILE CANYON)
CREEK IN DAYTON VALLEY, LYON)
COUNTY, NEVADA.)

RULING

GENERAL

Application 47404 was filed on November 8, 1983, by BCB Ventures to appropriate 10.0 c.f.s. of water from Six Mile Canyon Creek for mining and milling purposes within the S1/2 N1/2 and the SE1/4 Section 31, T.17N., R.22E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NE1/4 Section 31, T.17N., R.22E., M.D.B.&M.¹

Application 47405 was filed on November 8, 1983, by BCB Ventures to appropriate 10.0 c.f.s. of water from Six Mile Canyon Creek for irrigation purposes on 520 acres of land within the S1/2 N1/2, SE1/4, SW1/4 SW1/4 Section 31, T.17N., R.22E. M.D.B.&M.; SE1/4 SE1/4 Section 36, T.17N., R.21E., M.D.B.&M.; E1/2 NE1/4 Section 1, T.16N., R.21E., M.D.B.&M.; and the NW1/4 NW1/4 Section 6, T.16N., R.22E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NE1/4 Section 31, T.17N., R.22E., M.D.B.&M.¹

Applications 47404 and 47405 were timely protested by Hazel M. Landers on the following grounds:²

"I have water applications filed with the State Engineer No. 28957, 28958 and 28959.

An application on surface waters may affect ground waters in the area where my application is made. I have vested rights on Six Mile Canyon Creek not adjudicated and new appropriations on Six Mile Canyon Creek will affect my rights."

A field investigation was conducted on December 11, 1984, to attempt to resolve the protests and to gather additional information for the State Engineer.²

The protestant, Hazel M. Landers, objected to the appropriation of up to 20.0 c.f.s. of water from Six Mile Canyon Creek for two major reasons: the creek maintains the static water level and otherwise contributes to the underground recharge for at least one of her wells located about a mile downstream of the proposed points of diversion of Applications 47404 and 47405; Ms. Landers also has acquired a parcel of land downstream of the proposed place of use of BCB Ventures of approximately 300 acres which has an undetermined vested right for mining and milling from Six Mile Canyon Creek. A claim of vested right was to be filed as soon as the chain of title was completed.

¹ Public record in the office of the State Engineer.

² Public record in the office of the State Engineer under Applications 47404 and 47405.

Mr. Jerry Brownfield, agent for Ms. Landers, indicated there was no estimate of consumptive use of Application 47404 which may allow all the water to be transferred away from the channel and used in such a manner as to limit recharge to the underground basin or be of benefit to downstream users. He also commented that any storage facilities that may be used in conjunction with the subject applications would usually "silt in" allowing more evaporation of the water that could be contributing to other uses.

Brian Randall for the applicant responded that his client did not wish to appropriate any water that would be sinking in the ground or otherwise would be interfering with prior rights. At the time the applications were filed, there was no record of any other filings downstream of the proposed points of diversion. His client wished to appropriate that water which would reach the Carson River and flow out of the basin. Julius Bunkowski, applicant, had plans to use other sewage effluent as a back-up to the creek water for his operations.

It was also noted that an adjudication on Six Mile Canyon Creek may take several years to complete and that the subject applications, if approved, would always be subject to prior rights.

FINDINGS OF FACT

I.

Six Mile Canyon Creek is a small perennial stream which originates in the Flowery Mountain Range and flows east to Dayton Valley reaching the Carson River during high flows.³ The source of water is from snow melt, springs and intermittent sewage effluent flows.³

II.

Claim of vested right No. 04279 was filed on April 12, 1985, by Hazel Landers for all the water of Six Mill Creek for mining and milling purposes. The point of diversion is given as within the SW1/4 SW1/4 Section 30, T.17N., R.22E., and the place of use is within portions of the SW1/4 SW1/4, SE1/4 SW1/4 Section 30; NE1/4 NW1/4, SE1/4 NW1/4, NW1/4 NE1/4 SW1/4 NE1/4, SE1/4 NE1/4, NE1/4 SE1/4 Section 31; SW1/4 NW1/4, NW1/4 SW1/4 NE1/4 SW1/4, SW1/4 SW1/4, SE1/4 SW1/4, SW1/4 SE1/4, SE1/4 SE1/4 Section 32, T.17N., R.22E., M.D.B.&M., and a portion of the N1/2 Section 5, T.16N., R.22E., M.D.B.&M. The stream was measured at 8.1 c.f.s. on April 3, 1985, on the claimants property.¹

III.

Six Mile Casnyon Creek contributes to the recharge of Dayton Valley subbasin in which appropriations of ground water substantially exceed the perennial yield of the basin.⁴

³ USGS 15 Minute Quadrangle Map entitled Virginia City, Nevada, (1950), #522.

⁴ See Rulings 1996, 2064, 2168, 2173, 2220, 2226, 2322, 2323, 2536, 2493, 2539, 2588, 2593 and 2630, public record in the office of the State Engineer.

IV.

Permits 28957, 28958 and 28959 are underground water rights of record in the name of Hazel Landers, the points of diversion of which are located within approximately one mile of the points of diversion of Applications 47404 and 47405.¹

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁶

- A. There is no unappropriated water at 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.

III.

Approval of Applications 47404 and 47405 would allow diversion of up to 20.0 c.f.s. of water in a stream that usually flows less than half that amount and in which there is a claim of vested right for the entire flow.

IV.

Six Mile Canyon Creek contributes to the ground water in a recharge deficient basin and in close proximity to the points of diversion of three ground water rights in the name of the protestant.

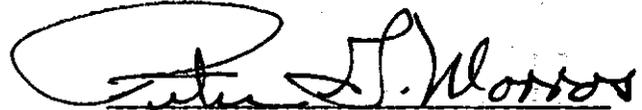
⁵ NRS 533.325.

⁶ NRS 533.370(3).

RULING

Applications 47404 and 47405 are hereby denied on the grounds that approval of said applications 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 8th day of
May, 1985.