

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 48271)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF BELMONT SPRING IN RALSTON)
VALLEY, NYE COUNTY, NEVADA.)

RULING

GENERAL

Application 48271 was filed on August 3, 1984, by Kenneth L. Eason to appropriate 1.0 c.f.s. of water from Belmont Spring for quasi-municipal purposes within the SE1/4 SW1/4, SW1/4 SE1/4, S1/2 NE1/4 Section 26, T.9N., R.45E., M.D.B.&M. The point of diversion is described as being within the SE1/4 NE1/4 Section 26, T.9N., R.45E., M.D.B.&M.¹

Application 48271 was timely protested by Anthony J. Perchetti et al., Bennie Ball, James R. Marsh, Terence E. Terras and R.J. Frank on the following grounds:¹

"The waters as filed for by this Permit (#48271) have been utilized in a continuous manner by the land owners of the Town of Belmont for domestic purposes. Said usage pre-dates the year 1874, and, as such, the undersigned feels that this permit would be detrimental to a vested right to the waters of Belmont Spring, and I am a present user of the waters of Belmont Spring."

The above named protestants requested that Application 48271 be denied.

A formal field investigation was conducted on May 22, 1985, to attempt to resolve the protests and to gather additional information for the State Engineer.¹

A measurement of Belmont Springs by staff revealed a flow of approximately 60 gallons per minute at 7:30 A.M. on the day of the field investigation. There was no indication that much water was being used in the town system at that time.

The protestants indicated that 10 or so homes that are presently hooked to the town system may be cut off if Application 48271 was approved. They were also concerned about the stream environment in the town that provided shade and recreation for the residents of the town. Since the protestants felt they had vested rights on the spring, the adjudication process and recording of claims of vested rights was explained to them by the representatives of this office.

Kenneth Eason, applicant, stated that he had no intention of cutting off any existing hook-ups but only to appropriate the overflow of the spring. He stated the water was to be used to enhance the value of his subdivision lots and would be used for aesthetics or to supplement the domestic wells.

¹ Public record in the office of the State Engineer under Application 48271.

The investigation was concluded with a general agreement among the protestants that they would not object to Mr. Eason's proposed appropriation from Application 48271 if he would move the point of diversion downstream below the town so only the excess water could be appropriated.

Mr. Eason agreed to file an application to change the point of diversion within 30 days.

FINDINGS OF FACT

I.

Application 49178 was filed by Kenneth L. Eason on July 8, 1985, to change the point of diversion of Application 48271 from the SE1/4 NE1/4 Section 26, T.9N., R.45E., M.D.B.&M., downstream approximately one-quarter mile to within the NW1/4 SE1/4 Section 26, T.9N., R.45E., M.D.B.&M. The new point of diversion is below the established community of Belmont as depicted on the USGS 7.5 quadrangle map entitled "Belmont East" (1971).²

II.

The following water rights and claims of vested right for Belmont Spring are of record in the office of the State Engineer.³

1.) Permit 4908, Certificate 518, in the name of Andrew M. and Reta J. Eason, was filed on February 15, 1918, and issued for 0.058 c.f.s. of water for irrigation purposes. The point of diversion is within the SE1/4 NE1/4 Section 26, T.9N., R.45E., M.D.B.&M., and the place of use is within the NW1/4 SE1/4, SW1/4 SE1/4 and the SW1/4 SW1/4 Section 26, T.9N., R.45E., M.D.B.&M.

2.) Permit 45114, in the name of Andrew M. and Reta J. Eason, was filed on December 8, 1981, to change the manner of use and place of use of Permit 4908. The permit was issued on June 18, 1985, for 0.058 c.f.s. of water to be used for quasi-municipal and domestic purposes. The new place of use is described as being within the E1/2 NE1/4, W1/2 SE1/4 and Lot 5 of Section 26; SW1/4 NW1/4 Section 25, all in T.9N., R.45E., M.D.B.&M.

3.) Proof 04528, in the name of Frances E. and Newton H. (Jr.) Crumley et al., was filed on October 2, 1985, claiming a vested right for 0.15 c.f.s. of water for irrigation and domestic purposes. The point of diversion is given as within the NE1/4 NE1/4 Section 26, T.9N., R.45E., M.D.B.&M., and the place of use is within a portion of Section 26, T.9N., R.45E., M.D.B.&M.

² Public record in the office of the State Engineer under Application 49178 and USGS 7.5 quadrangle map entitled "Belmont East" (1971).

³ Public record in the office of the State Engineer under Permits 4908, 45114 and Proofs of Appropriation 04528 through 04541, inclusive, and 04544.

4.) Proof 04529, in the name of Angelo F. or Inez Ciarlantine or Donna L. Motis, was filed on October 3, 1985, claiming a vested right for 0.25 c.f.s. of water for irrigation and domestic purposes. The point of diversion is given as within the NE1/4 NE1/4 Section 26, T.9N., R.45E., M.D.B.&M., and the place of use is within a portion of Section 26, T.9N., R.45E., M.D.B.&M.

5.) Proof 04530, in the name of Fred and Carol Anderson, was filed on October 4, 1985, claiming a vested right for 0.25 c.f.s. of water for irrigation and domestic purposes. The point of diversion is given as within the NE1/4 NE1/4 Section 26, T.9N., R.45E., M.D.B.&M., and the place of use is within a portion of Section 26, T.9N., R.45E., M.D.B.&M.

6.) Proof 04531, in the name of Anthony J. and Diane Perchetti, was filed on October 4, 1985, claiming a vested right for 0.15 c.f.s. of water for irrigation and domestic purposes. The point of diversion is given as within the NE1/4 NE1/4 Section 26, T.9N., R.45E., M.D.B.&M., and the place of use is within a portion of Section 26, T.9N., R.45E., M.D.B.&M.

7.) Proof 04532, in the name of Tom or Paula Kniefel or Diana Dillwith, was filed on October 7, 1985, claiming a vested right for 0.15 c.f.s. of water for irrigation and domestic purposes. The point of diversion is given as within the NE1/4 NE1/4 Section 26, T.9N., R.45E., M.D.B.&M., and the place of use is a portion of Section 26, T.9N., R.45E., M.D.B.&M.

8.) Proof 04533, in the name of Richard Ashton, was filed on October 7, 1985, claiming a vested right for 0.15 c.f.s. of water for irrigation, domestic and quasi-municipal purposes. The point of diversion is given as within the NE1/4 NE1/4 Section 26, T.9N., R.45E., M.D.B.&M., and the place of use is within a portion of Section 26, T.9N., R.45E., M.D.B.&M.

9.) Proof 04534, in the name of Jim Marsh, was filed on October 7, 1985, claiming a vested right for 0.15 c.f.s. of water for irrigation and domestic purposes. The point of diversion is given as within the NE1/4 NE1/4 Section 26, T.9N., R.45E., M.D.B.&M., and the place of use is within a portion of Section 26, T.9N., R.45E., M.D.B.&M.

10.) Proof 04535, in the name of Stanley and Barbara Galvin, was filed on October 9, 1985, claiming a vested right for 0.15 c.f.s. of water for irrigation and domestic purposes. The point of diversion is given as within the NE1/4 NE1/4 Section 26, T.9N., R.45E., M.D.B.&M., and the place of use is a portion of Section 26, T.9N., R.45E., M.D.B.&M.

11.) Proof 04536, in the name of Terence E. and Frances B. Terras, was filed on October 9, 1985, claiming a vested right for irrigation and domestic purposes. The point of diversion is given as within the NE1/4 NE1/4 Section 26, T.9N., R.45E., M.D.B.&M., and the place of use is a portion of Section 26, T.9N., R.45E., M.D.B.&M.

12.) Proof 04537, in the name of Robert J. Frank, was filed on October 9, 1985, claiming a vested right for 0.15 c.f.s. of water for irrigation and domestic purposes. The point of diversion is given as within the NE1/4 NE1/4 Section 26, T.9N., R.45E., M.D.B.&M., and the place of use is within a portion of Section 26, T.9N., R.45E., M.D.B.&M.

13.) Proof 04538, in the name of John R. or Nadine Roller, was filed on October 9, 1985, claiming a vested right for 0.15 c.f.s. of water for irrigation and domestic purposes. The point of diversion is given as the NE1/4 NE1/4 Section 26, T.9N., R.45E., M.D.B.&M., and the place of use is a portion of Section 26, T.9N., R.45E., M.D.B.&M.

14.) Proof 04539, in the name of Michael L. Merlino, was filed on October 9, 1985, claiming a vested right for 0.15 c.f.s. of water for irrigation and domestic purposes. The point of diversion is given as the NE1/4 NE1/4 Section 26, T.9N., R.45E., M.D.B.&M., and the place of use is a portion of Section 26, T.9N., R.45E., M.D.B.&M.

15.) Proof 04540, in the name of Howard and Ruth Mecum, was filed on October 14, 1985, claiming a vested right for 0.15 c.f.s. of water for irrigation and domestic purposes. The point of diversion is given as the NE1/4 NE1/4 Section 26, T.9N., R.45E., M.D.B.&M., and the place of use is a portion of Section 26, T.9N., R.45E., M.D.B.&M.

16.) Proof 04541, in the name of Ray L. and Adele D. Eicher, was filed on October 14, 1985, claiming a vested right for 0.15 c.f.s. of water for irrigation and domestic purposes. The point of diversion is given as within the NE1/4 NE1/4 Section 26, T.9N., R.45E., M.D.B.&M., and the place of use is within Section 26, T.9N., R.45E., M.D.B.&M.

17.) Proof 04544, in the name of Bennie Ball, was filed on October 21, 1985, claiming a vested right for 0.15 c.f.s. of water for irrigation and domestic purposes. The point of diversion is given as being within the NE1/4 NE1/4 Section 26, T.9N., R.45E., M.D.B.&M., and the place of use is within Section 26, T.9N., R.45E., M.D.B.&M.

III.

The limit and extent of the claims of vested rights for irrigation, domestic and quasi-domestic use for Belmont Springs has not yet been determined as set forth under Chapter 533 of NRS.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.⁴

II.

The change of the point of diversion on the Belmont Springs channel under Application 49178 removes the principle objection of the protestants to Application 48271 and allows the applicant to appropriate only the excess water subject to existing rights and claims of vested rights.

⁴ NRS 533.325.

RULING

The protests to Application 48271 are hereby overruled on the grounds that the proposed change of the point of diversion under Application 49178 will remove the principle objection of the protestants and will not tend to impair the value of existing rights or be otherwise detrimental to the public welfare.

Application 48271 will be granted upon receipt of statutory permit fees subject to existing rights and upon the condition that Application 49178 is approved at the same time.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter G. Morros", is written over a horizontal line. The signature is stylized and cursive.

PETER G. MORROS
State Engineer

PGM/GC/bl

Dated this 8th day of
November, 1985.