

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 46573)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNNAMED STREAM IN)
CHURCHILL VALLEY, LYON COUNTY,))
NEVADA.)

RULING

GENERAL

Application 46573 was filed on January 25, 1983, by Western Lode Mining to appropriate 1.0 c.f.s. of water from an unnamed stream for mining and milling purposes within the SW1/4 SW1/4 Section 21; NW1/4 NW1/4 Section 28; SE1/4 NE1/4 NE1/4, NE1/4 SE1/4 NE1/4, W1/2 SE1/4 NE1/4, NW1/4 NE1/4 SE1/4, NE1/4 NW1/4 SE1/4, S1/2 NW1/4 SE1/4, N1/2 SW1/4 SE1/4, SE1/4 SW1/4, E1/2 SW1/4 NE1/4 Section 29; NE1/4 NW1/4, NW1/4 NW1/4, SW1/4 NW1/4 Section 32; SE1/4 NE1/4, W1/2 NE1/4 SE1/4, E1/2 NW1/4 SE1/4, SW1/4 NW1/4 SE1/4, SE1/4 NE1/4 SW1/4, W1/2 SW1/4 SE1/4, SE1/4 SW1/4, E1/2 SW1/4 SW1/4 Section 31, T.15N., R.24E., M.D.B.&M.; NW1/4 NW1/4 Section 6, T.14N., R.24E., M.D.B.&M.; NE1/4 NE1/4, N1/2 SW1/4 NE1/4, S1/2 NW1/4 NE1/4 Section 1, T.14N., R.23E., M.D.B.&M. The point of diversion is described as being within the SE1/4 NE1/4 Section 31, T.15N., R.24E., M.D.B.&M.¹

Application 46573 was timely protested by Sario Livestock Company on the following grounds:¹

"Protestor has for many years used water from a well owned by the BLM but under permit to protestor. Said water is used for the watering of sheep and protestor has filed application 46887 for said well. Protestor believes that any diversion from said stream will adversely affect said well."

A formal field investigation was held at the site on December 11, 1984, to attempt to resolve the protest and to gather additional information for the State Engineer.¹

The applicant represented that he planned to tunnel under the stream bed of what was determined to be Churchill Canyon Creek to remove placer gold from the interface of the gravel strata and bedrock. The water in the tunnel would be diverted and pumped from the tunnel to be used in the milling operation.

The applicant was informed that the source appeared to be underground water rather than surface water as represented in the application. He agreed to consider this and to withdraw the application and submit a new one if the operation was to be pursued.

The protestant indicated that the "Sario" well representing his existing right was located only about 300 feet downgrade of the proposed point of diversion of Application 46573 and its low flow (4 gallons per minute) and shallow depth (130 feet) would subject it to undue influence by the proposed diversion.

¹ Public record in the office of the State Engineer under Application 46573.

FINDINGS OF FACT

I.

The proposed source of water for Application 46573 is to be developed from a tunnel to be constructed below grade of Churchill Canyon stream bed, an intermittent water course originating in the Pinenut Mountain range and flowing northeast towards Adrian Valley. The tunnel is to be dug along the gravel bedrock interface.¹ Application 46573 shows an unnamed stream as the source of water.

II.

Proof 02227 is a claim of vested right for 0.025 c.f.s. of water from Churchill Canyon Creek for stockwatering purposes in the name of Chango and Aldax. The point of diversion of the proof is downstream of Application 46573.²

III.

"Sario" well, Permit 46887 under permit by the protestant, is a relatively shallow well downgrade of the proposed point of diversion of Application 46573 at a distance of approximately 300 feet.¹

IV.

The limit and extent of claims of vested rights on Churchill Canyon Creek have 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 and determination.³

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁴

- 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.

² Public record in the office of the State Engineer under Proof of Appropriation 02227.

³ NRS 533.325.

⁴ NRS 533.370(3).

III.

The evidence and information available indicates that the source of water represented in Application 46573 is not the same source to be diverted for mining and milling purposes according to a representative of the applicant. "No application shall be for the water of more than one source to be used for more than one purpose."⁵

IV.

Approval of Application 46573 would allow diversion of up to 1.0 c.f.s. of water from an underground source in close proximity to a shallow well with an existing right and would allow considerable disturbance and diversion of water in the stream bed through which water must flow to reach downstream claims of vested rights.

RULING

Application 46573 is hereby denied on the grounds that the source of water proposed to be diverted is different than that represented on the application and that approval of said application would tend to impair existing rights and be detrimental to the public interest.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/GC/bl

Dated this 7th day of
JANUARY, 1986.

⁵ NRS 533.330.