

**IN THE OFFICE OF THE STATE ENGINEER**

IN THE MATTER OF APPLICATION 51549)  
FILED TO APPROPRIATE WATER FROM)  
TRAIL CREEK IN THE OWYHEE RIVER AREA,) )  
ELKO COUNTY, NEVADA. )

**RULING**

**GENERAL**

Application 51549<sup>1</sup> was filed on November 10, 1987, by Trail Creek Mines to appropriate 0.50 c.f.s. of water from Trail Creek for mining and milling purposes within the NE1/4 SE1/4 Section 20, NW1/4 SW1/4 Section 21, T.44N., R.53E., M.D.B.&M. The point of diversion is given as being within the NE1/4 SE1/4 Section 20, T.44N., R.53E., M.D.B.&M.

Application 51549 was timely protested<sup>2</sup> by Bieroth Ranch; Peter and Karen Mori; Ted Baker; Norman L. Thompson and George Hanson for one or more of the following reasons:

- 1) Trail Creek is already fully appropriated for stockwater and irrigation use from claims of vested rights and existing appropriations.
- 2) The meager flows of the creek during the summer months are crucial for ranch operations downstream of the proposed point of diversion.
- 3) The effect of the proposed application will cause damage to the stream channel, muddy the water and endanger the fishery.

**FINDINGS OF FACT**

I.

Existing appropriative rights, application and claims of vested rights for Trail Creek are as follows:<sup>3</sup>

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<sup>1</sup> Application 51549 is a public record on file in the office of the State Engineer.

<sup>2</sup> A copy of the protests are public record on file under Application 51549 in the office of the State Engineer.

<sup>3</sup> Public records on file in the office of the State Engineer.

- 1) Permit 8415, Certificate 2157 was issued for 1.37 c.f.s. of water for irrigation of 137.42 acres. The owner of record is Lorraine E. Ireland.
- 2) Claim of vested right 01856 was filed on October 23, 1924, by Chester L. Woodward claiming sufficient water for irrigation of 30.46 acres of land with an 1887 priority. The current owner of record is Lorraine E. Ireland.
- 3) Claim of vested right 02570 was filed on September 27, 1966, by Lorraine E. Ireland claiming 3.0 c.f.s. of water for irrigation of up to 138 acres of land with a priority of 1887.
- 4) Claim of vested right 02597 was filed on January 23, 1967, by George G. and Rose S. Hanson claiming 2.0 c.f.s. of water for irrigation of 108.4 acres of land with a priority of 1889.
- 5) Claim of vested right 04553 was filed on March 3, 1986, by Estella L. Morse claiming sufficient water for irrigation of 31.8 acres of land with a priority of prior to 1905.

## II.

Trail Creek<sup>4</sup> is a tributary to the Owyhee River, an interstate stream system, which flows from its head waters in Nevada into the State of Idaho. A petition was filed with this office in 1924 to adjudicate the water of the Owyhee River and its tributaries. A notice of order and proceedings was issued in March 1925, and all claimants to rights on the stream were requested to file their claims.

A water litigation suit was filed in Federal Court in 1924 to determine water rights on the stream system. The suit was dismissed in 1939 without prejudice.

No further legal or administrative action has been taken to adjudicate the claims awaiting federal action on the interstate stream.

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<sup>4</sup> Owyhee River adjudication correspondence file II (1921) and Owyhee River adjudication proceedings III are public record on file in the office of the State Engineer.

III.

Action<sup>5</sup> on protested Application 23626 filed in January, 1967, has been delayed pending the federal adjudication suit on the Owyhee River and its tributaries.

IV.

The proposed point of diversion of subject Application 51549 is upstream from all existing rights of record.<sup>6</sup> The subject application is for a substantial amount of water that may be removed from the stream environment.

V.

There is evidence in the record to indicate that approval of the subject application would interfere with or impair existing rights and that it would not be in the public interest.<sup>7</sup>

CONCLUSIONS

I.

The State Engineer has jurisdiction<sup>8</sup> of the parties and the subject matter of this action.

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<sup>5</sup> Letter dated October 23, 1980, from the Division of Water Resources filed under Application 23626 in the office of the State Engineer.

<sup>6</sup> See footnote number 1.

<sup>7</sup> See footnote number 3.

<sup>8</sup> NRS 533.325.

II.

The State Engineer is prohibited by statute from granting a permit where:<sup>8</sup>

- a) There is no unappropriated water at the source, or
- b) The proposed use conflicts with existing rights, or
- c) The proposed use threatens to prove detrimental to the public interest.

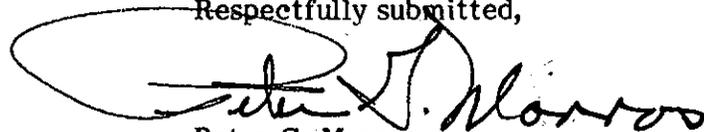
III.

Approval of Application 51549 would allow a substantial diversion of water upstream from all existing appropriative rights and claims of vested right.

RULING

The protests to Application 51549 are hereby upheld and the subject application is hereby denied on the grounds that it 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/bk

Dated this 11th day of  
July, 1988.

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<sup>8</sup> NRS 533.370 subsection 3.