

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION)
NO. 12832 FILED TO APPROPRIATE)
WATER FROM CHINA GARDEN CREEK)
PARADISE VALLEY, HUMBOLDT)
COUNTY, NEVADA.)
)

RULING

GENERAL

I.

Application 12832 was filed on March 1, 1949 by C.J. and Jack Kearns to appropriate 0.2 c.f.s. of water from China Garden Creek for stockwatering for 1,600 head of cattle within the NW 1/4 SW 1/4 of Section 8, T.38N., R.38E., M.D.B.&M. The point of diversion is described as being within the NW 1/4 SW 1/4 Section 8, T.38N., R.38E., M.D.B.&M.¹

II.

The application was protested by McCleary Lumber Company on December 8, 1949, on the grounds that there is no water in the source subject to appropriation; that the applicant does not have a right to graze 1600 head of cattle in the grazing area dependent on said source for water; that the protestant controls, under contract of purchase, all of the odd numbered sections of land in the township where said source is situated to which lands grazing rights on the public domain in the even numbered sections legally attached by virtue of use of said lands by lessees of Southern Pacific Land Company which priority by use on the adjacent public land still and now lawfully attaches to said Southern Pacific lands.

That applicant can not use said land or said water for the purposes specified without continual trespass on protestant's lands to which vested grazing and stock watering rights have attached by long continued use.

That the granting of said application would be contrary to public policy as defined in the 1925 Stockwatering Act and that protestant's vested rights to water and grazing would be impaired and destroyed.¹

¹ Public record in the office for the State Engineer under Application 12832.

FINDINGS OF FACT

I.

Neither the applicant nor the protestant any longer have access or control of any of the land nor have any use for the water.²

II.

Evidence introduced at hearings before the State Engineer indicates that neither the applicant or protestant have any continuing interest in the application.³

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where⁵:

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use or change conflicts with existing rights or
- C. The proposed use or change threatens to prove detrimental to the public interest.

2 See letter in file 44487 dated January 10, 1985 wherein the source of water is described as being in the Bloody Run Allotment and the range user is Nevada First Corporation leased to Mrs. George Miller.

3 See affidavit introduced by James R. Murdock at the hearings held in Winnemucca on July 26, 1982 related to application 36472 et. al.

4 NRS Chapter 533.

5 NRS Chapter 533.370

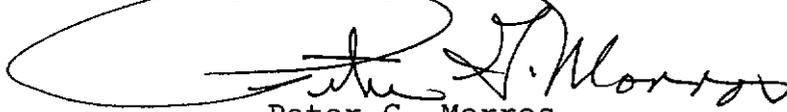
III.

The State Engineer finds that it would not be in the public interest to approve an application when the applicant does not have the ability to place the water to beneficial use.

RULINGS

Application 12832 is hereby Denied on the grounds that the applicant cannot demonstrate the ability to place the water to beneficial use and to approve said application would not be in the public interest. No ruling is made on the protest.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter G. Morros", is written over a large, hand-drawn oval. The signature is fluid and cursive.

Peter G. Morros
State Engineer

PGM/RMT/pm

Dated this 29th day of

September, 1989.