

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 53262)
FILED TO APPROPRIATE THE WATERS)
FROM AN UNNAMED SPRING LOCATED IN)
BUENA VISTA VALLEY, PERSHING)
COUNTY, STATE OF NEVADA.)

RULING

GENERAL

I.

Application 53262 was filed on May 12, 1989, by Philip J. and Gail M. Benolkin to appropriate 0.067 c.f.s. of water from an unnamed spring for irrigation and domestic purposes on 2-1/2 acres within the N1/2 NW1/4 of Section 27, T.30N., R.34E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SW1/4 of Section 22, T.30N., R.34E., M.D.B.&M.¹

FINDING OF FACT

A field investigation was conducted on December 6, 1989 by Steve Walmsley, Hydraulic Engineer of the Division of Water Resources.

Perennial flow from the spring extends approximately 75' below the source. A discharge measurement of the source using a 90° W-Notch Weir yielded a flow of 0.14 gallons per minute or 0.0008 c.f.s. The natural discharge only supports an area of approximately 75' long by 15' wide consisting of grass, sedges and a few shrubby phreatophytes.

II.

The source was examined and the flow rate was found to be only 1.2% of the 0.067 c.f.s. (30 g.p.m.) flow rate requested to irrigate 2-1/2 acres of land.²

¹ Public record in the office of the State Engineer.

² Calculated using measured flow rates from the December 6, 1989 Field Investigation.

III.

Access by wildlife to water from a spring or water that has seeped to the surface of the ground is required by statute.⁵

IV.

Providing water for wildlife has been declared a beneficial use.⁶

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.³

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where⁴:

- 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.

III.

An adequate flow does not exist at the source to support irrigation of 2-1/2 acres of land.

³ NRS Chapter 533

⁴ NRS 533.370

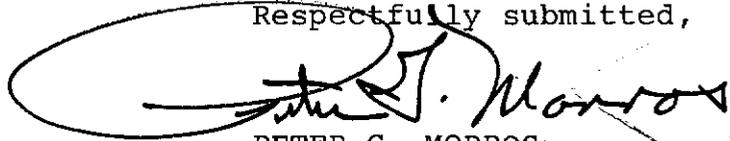
⁵ See NRS 533.367

⁶ State v. State Engineer, 104 Nev. 709, 706 P. 2d 263 (1988).

RULING

Application 53262 is hereby denied on the grounds that it would not be in the public interest to grant a permit on a source of water where there would not be sufficient water flow to ensure the customary use by wildlife as required under NRS 533.367.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter G. Morros", is written over a circular stamp. The signature is fluid and cursive.

PETER G. MORROS
State Engineer

PGM/SW/pm

Dated this 29th day of
January, 1990