

**IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA**

IN THE MATTER OF APPLICATIONS 20234 AND)
22038 FILED TO APPROPRIATE THE PUBLIC)
WATERS OF GARDNER RESERVOIR (ASH)
SPRINGS AND CRYSTAL SPRINGS) AND)
PAHRANAGAT LAKE AND TRIBUTARIES,)
RESPECTIVELY, LOCATED WITHIN THE)
PAHRANAGAT VALLEY HYDROGRAPHIC)
BASIN (209), LINCOLN COUNTY, NEVADA.)

RULING
#5940

GENERAL

I.

Application 20234 was filed on January 10, 1962, by Buckhorn Investment Co., and later assigned to the United States of America, to appropriate 30.0 cubic feet per second (cfs), not to exceed 3,500 acre-feet annually (afa), of water from Gardner Reservoir (Ash Springs and Crystal Springs). The proposed manner of use is to irrigate about 800 acres within an 1,814 acre area further described as being located within the $W\frac{1}{2} W\frac{1}{2}$, $SE\frac{1}{4} NW\frac{1}{4}$ of Section 2, $NE\frac{1}{4} NE\frac{1}{4}$ of Section 3, $E\frac{1}{2} E\frac{1}{2}$ of Section 10, $W\frac{1}{2} W\frac{1}{2}$, $E\frac{1}{2} SW\frac{1}{4}$, $SW\frac{1}{4} SE\frac{1}{4}$ of Section 11, $W\frac{1}{2}$, $W\frac{1}{2} E\frac{1}{2}$, $SE\frac{1}{4} NE\frac{1}{4}$, $E\frac{1}{2} SE\frac{1}{4}$ of Section 14, $N\frac{1}{2} N\frac{1}{2}$, $S\frac{1}{2} NE\frac{1}{4}$, $E\frac{1}{2} SE\frac{1}{4}$ of Section 23, $SW\frac{1}{4}$ of Section 24, $N\frac{1}{2} NW\frac{1}{4}$, $SE\frac{1}{4} NW\frac{1}{4}$, $W\frac{1}{2} NE\frac{1}{4}$ of Section 25, T.8S., R.61E., M.D.B.&M. The proposed point of diversion is described as being located within the $NW\frac{1}{4} NW\frac{1}{4}$ of Section 2, T.8S., R.61E., M.D.B.&M.¹

II.

Application 22038 was filed on June 11, 1964, by the United States of America Bureau of Sport Fisheries and Wildlife, to appropriate 4.63 cfs of water from Upper Pahranaagat Lakes and Tributaries. The proposed manner of use is the operation and maintenance of a National Wildlife Refuge and irrigation of an area further described as being located within the $NW\frac{1}{4} SW\frac{1}{4}$, $SW\frac{1}{4} SW\frac{1}{4}$ of Section 2, $SE\frac{1}{4} NE\frac{1}{4}$ of Section 3, $NW\frac{1}{4} NW\frac{1}{4}$, $SE\frac{1}{4} NW\frac{1}{4}$, $NE\frac{1}{4} SW\frac{1}{4}$, $NW\frac{1}{4} SW\frac{1}{4}$, $SW\frac{1}{4} SE\frac{1}{4}$ of Section 11, $NW\frac{1}{4} NE\frac{1}{4}$, $SW\frac{1}{4} NW\frac{1}{4}$, $NW\frac{1}{4} SW\frac{1}{4}$, $SE\frac{1}{4} SW\frac{1}{4}$, $SE\frac{1}{4} SE\frac{1}{4}$ of Section 14, $NE\frac{1}{4} NE\frac{1}{4}$ of Section 15, $NE\frac{1}{4} NE\frac{1}{4}$, $NE\frac{1}{4} NW\frac{1}{4}$, $NE\frac{1}{4} SE\frac{1}{4}$, $NW\frac{1}{4} SE\frac{1}{4}$ of Section 23, $NE\frac{1}{4} SW\frac{1}{4}$, $SW\frac{1}{4} SW\frac{1}{4}$, $SE\frac{1}{4} SW\frac{1}{4}$, $SW\frac{1}{4} SE\frac{1}{4}$ of Section 24, $NE\frac{1}{4} NE\frac{1}{4}$, $NW\frac{1}{4}$

¹ File No. 20234, official records in the Office of the State Engineer.

NE¼, SW¼ NE¼, NE¼ NW¼, SE¼ NW¼, NE¼ SW¼ of Section 25, T.8S., R.61E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ of Section 3, T.8S., R.61E., M.D.B.&M.²

III.

Application 20234 was protested by Erwin Burns on the grounds that all the waters of Pahranaagat Lake and its tributaries have been fully adjudicated and appropriated; therefore, there is no water available for appropriation. Application 20234 was protested by Mrs. Charles Wright on the grounds that she is the holder of water rights in and to said waters and that any further diversion of said waters will diminish the supply of Protestant.¹

IV.

Application 22038 was protested by the Alamo Irrigation Company on the grounds that if previous applications then pending for agricultural purposes in the Pahranaagat Lake area were satisfied there would be no water available for appropriation and would place in jeopardy the present approved appropriation of the Alamo Irrigation Company. Application 22038 was protested by Erwin Burns on the grounds that the water is appropriated, is for water from more than one source, granting the application would be detrimental to the public welfare, and would tend to impair the value of existing rights.²

FINDINGS OF FACT

I.

The Applicant has supplied additional information indicating that its intent is to store unappropriated water during the winter months for use on the Pahranaagat National Wildlife Refuge.

The subject applications request to appropriate waters of Upper Pahranaagat Lake (formerly Gardner Reservoir) and its tributaries, Ash and Crystal Springs. Under the Pahranaagat Lake Decree of 1929, water from these springs is fully appropriated for irrigation between March 14th and October 1st. The 1965 amendment to the decree allows each user to divert for flushing mineral salts between October 1st and March 14th. Despite the allocations for flushing salts we believe some of the springs' winter flows remain unappropriated.³

² File No. 22038, official records in the Office of the State Engineer.

³ See, U.S.D.O.I. Fish and Wildlife Service correspondence, January 15, 2004, File Nos. 20234 and 22038, official records in the Office of the State Engineer.

In support, the Applicant provided cumulative measured inflows to Upper Pahranaagat Lake for 14 selected years between 1963 and 2003. By subtracting the Applicant's own allocations and the appropriations for flushing mineral salts, it shows a positive inflow for 12 out of the 14 years between October and March. The values for 1991, 1992, 1993 and 1994 were collected by the United States Geological Survey (USGS) with all other values collected by the Applicant. For the USGS values, it shows a positive inflow for 3 out of the 4 years between October and March.⁴ A review of this data indicates stock-water and domestic use and any associated ditch losses are not accounted for in this analysis and it does not appear to follow the allocations allowed for the non-irrigation season water rotation schedule.

The source of water described under Applications 20234 and 22038 are part of a water system where the relative rights to the waters have already been adjudicated.⁵ The Decree has been corrected and affirmed by the United States District Court.⁶ During what is commonly termed the non-irrigation season, the amended decree provides that each decreed user is entitled to divert sufficient water for stock and domestic purposes. In addition to the water allowed for irrigation, stock and domestic purposes, each user is entitled to, in proper proportion and priority, an economical bi-monthly diversion of water for washing mineral salts from their land; such diversion to be permitted from October 1st through March 14th.

In accordance with the decree, the State Engineer issued an official Order regarding the rotation schedule for Ash Springs and Crystal Springs for permitted diversions during the non-irrigation season. The Order notes, "Because of the limitation on the amount of water available for distribution, part of the priorities and lands that are listed in the Decree will receive their water during the months of October, December and February. The remainder of the priorities and lands not receiving their allotment during the above mentioned months will receive it during the months of November, January and March." In examining the rotation schedules for Ash Springs and Crystal Springs, it is clear that the entire flow of the respective springs was accounted for and allocated. For example, the rotation schedule shows the base flow of Ash

⁴ *Ibid.*

⁵ Findings of Fact, Conclusions of Law Judgment and Decree, In the Matter of the Determination of the Relative Rights in and to the Waters of Pahranaagat Lake and its Tributaries in Lincoln County, State of Nevada, Case No. 3160, Seventh Judicial District Court of the State of Nevada, In and for the County of Lincoln.

⁶ United States v. George W. Hennen, State Engineer, et al., Civil-LV-927, U.S. District Court for Nevada, May 1, 1968, Roger D. Foley, District Judge.

Spring was measured at 18.951 cfs. Ditch loss and stock water was allocated 25% or 4.74 cfs. The remaining 14.21 cfs is allocated for flushing under the rotation schedule.⁷

The State Engineer finds that the source of water for Application 20234 is Gardner Reservoir and tributaries being Ash Spring and Crystal Spring, which have been fully appropriated under the Pahrnagat Lake and its Tributaries Decree.

II.

The State Engineer finds that Gardner Reservoir and Pahrnagat Lake are one in the same. The State Engineer finds that Pahrnagat Lake is located entirely on property controlled by the Applicant under Application 20234, Pahrnagat Lake is the terminus of flow from Ash Spring and Crystal Spring, flow into Pahrnagat Lake does not leave the property controlled by the Applicant and other than the Applicant there are no holders of water rights from Pahrnagat Lake.

III.

The State Engineer finds that while the flow of Ash Spring and Crystal Spring has been fully appropriated under the Pahrnagat Lake and its Tributaries Decree there are times when the flows of Ash Spring and Crystal Spring are not fully diverted by water right holders upstream of Pahrnagat Lake. When the flow of Ash Spring and Crystal Spring are not fully diverted by the water right holders upstream of Pahrnagat Lake, the excess water flows into Pahrnagat Lake and becomes available for use by the Applicant without conflicting with the rights of water right holders upstream of Pahrnagat Lake. The State Engineer finds that Application 20234 can be granted subject to existing rights on Ash Spring and Crystal Spring with the understanding that the right is limited to that which is available at the point of diversion without demand for release upon any upstream holder of existing rights.

IV.

The State Engineer finds that Application 20234 and Application 22038 are held by the same Applicant. The State Engineer finds that Application 22038 is for the same water as Application 20234 and was filed prior to Application 20234 being assigned to the Applicant. The State Engineer finds that all of the undiverted flow from Ash Spring and Crystal Spring will be captured in Pahrnagat Lake and diverted under Application 20234, thus leaving no water available for appropriation pursuant to Application 22038.

⁷ State Engineer's Order No. 299, March 2, 1966, official records in the Office of the State Engineer.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁸

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁹

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that Ash Spring and Crystal Spring, are fully adjudicated and appropriated under the Pahrnagat Lake and its Tributaries Decree; however, there are times when the flows of Ash Spring and Crystal Spring are not fully diverted by water right holders upstream of Pahrnagat Lake and the undiverted flow of Ash Spring and Crystal Spring flows into Pahrnagat Lake.

IV.

The State Engineer concludes that water rights can be granted on a source that is fully appropriated provided said rights are granted subject to existing rights on the source and the right is limited to that which is available at the point of diversion without demand for release upon any upstream holder of existing rights. The granting of a water right under these conditions does not conflict with existing rights and thereby does not threaten to prove detrimental to the public interest.

V.

The State Engineer concludes that the issuance of a water right under Application 22038, where Application 20234 is being approved for the same source, would conflict with existing rights and be detrimental to the public interest.

⁸ NRS chapter 533.

⁹ NRS § 533.370 (5).

RULING

The protests to the granting of Application 20234 are overruled and Application 20234 is granted subject to:

1. the payment of the statutory permit fees;
2. existing rights on the sources; and
3. availability at the point of diversion without demand for release upon any upstream holder of existing rights.

The protests to the granting of Application 22038 are upheld and Application 22038 is hereby denied on the grounds that there is no unappropriated water at the proposed source, the application would conflict with existing rights and thereby threaten to prove detrimental to the public interest.

Respectfully submitted,



TRACY TAYLOR, P.E.
FOR State Engineer

TT/TW/jm

Dated this 10th day of
February, 2009.