

IN THE MATTER OF APPLICATIONS 15613)
AND 17061, FILED BY CITY OF ELY,)
NEVADA, TO APPROPRIATE WASTE WATER)
(ELY SEWER OUTFALL) AND OUTFLOW OF)
THE ELY CITY SEWER SYSTEM, RESPECTIVELY,)
FOR IRRIGATION PURPOSES.)

R U L I N G

DESCRIPTION OF APPLICATIONS 15613 AND 17061:

Application 15613 was filed April 23, 1954, by the City of Ely to appropriate 13.0 c.f.s. of the Waste Water (Ely sewer outfall) at a point within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 10, T. 16 N., R. 63 E., M.D.B.&M., or at a point which bears N.46°30'36" E., 2,044 feet from the S. W. corner of said Section 10. The land to be irrigated is 900 acres within the W $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ and W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 2; E $\frac{1}{2}$ E $\frac{1}{2}$ Section 3; E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 10; W $\frac{1}{2}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 11, T. 16 N., R. 63 E., M.D.B. & M. The period of use is January 1 to December 31 of each year.

Protests against the granting of this application were filed as follows:

November 8, 1956 by James T. Elliott, McGill, Nevada, on the grounds that City of Ely already has pending application for over ten second feet of water on this stream system which has not been satisfied. That the granting of additional 13 second feet from the same stream system would not be in the best interests of existing rights. That there is insufficient water in the source to satisfy existing permitted rights.

November 8, 1956 by Albert Romeo, P. O. Box 907, McGill, Nevada, on the grounds that it would be contrary to recent findings on adequacy of the stream system to satisfy existing and pending appropriations and would, therefore, jeopardize existing rights as established by a District Court Decree.

November 16, 1956, by East Ely Sanitation District, White Pine County, State of Nevada, a Public Corporation, on the grounds that accompanying map indicates Ely Sewer Outfall is to come from Ely City Townsite and the sewer system of protestant located therein, which are private waters and not subject to appropriation.

Application 17061 filed October 2, 1956, by City of Ely, Nevada, to appropriate 2.5 c.f.s. of the water of outfall of the Ely City Sewer System at a point in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 10, T. 16 N., R. 63 E., M.D.B. & M., or at a point from which the S.W. corner of said Section 10, bears S. 46°30'36" W., 2,044 feet to irrigate 260 acres of land within SW $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$ Section 35, T. 17 N., R. 63 E., M.D.B. & M.; W $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 2, T. 16 N., R. 63 E., M.D.B. & M. Period of use is March 1 to October 1 of each year.

The points of diversion of Applications 15558 and 17061 are the same.

Protests against the granting of this application were filed as follows:

December 19, 1956, by James T. Elliott, McGill, Nevada, on the grounds that all water in this stream system is fully appropriated.

December 10, 1956, by Albert Romeo on the grounds that all water in this stream is fully appropriated.

December 24, 1956, by East Ely Sanitation District, a Public Corporation, on the grounds that map accompanying permit indicates water to come from Ely City Outfall Sewer and could be confused with outfall of sewer system owned and operated by protestant.

General:

A field investigation in the matter of these applications was made by a representative of this office on July 31, 1958.

The following were present:

Victor H. Stafford, Senior Hydraulic Engineer
for the Nevada State Engineer.

John V. Caselli, Ely, Nevada, for the City of Ely
Nevada.

Loren O'Donnell, lessee of the Georgetown Ranch
owned by the City of Ely.

Albert Romeo, McGill, Nevada, - Protestant.

The City of Ely, applicant named in the two applications 15613 and 17061, seeks to appropriate 13.0 and 2.5 c.f.s., respectively, of the waters from Ely Sewage Disposal Plant, to irrigate 900 and 250 acres of land, respectively, on its Georgetown Ranch. The diversion of water of the two applications are from the same point.

The protests refer to source of water as "stream system". No definite name of these sources is given in the protests. However, it is assumed the sources of water referred to are Murry Creek and Robinson Canyon Creek. (Gleason Creek flowing in Robinson Canyon).

Robinson Canyon Creek, a tributary to Murry Creek, flows in a southeasterly direction and joins Murry Creek within the city limits of Ely at a point approximately in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 16, T. 16 N., R. 63 E., M.D.B.&M.. From this point Murry Creek flows northeasterly through Georgetown Ranch and joins Steptoe Creek at a point approximately in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 16, T. 17 N., R. 63 E., M.D.B.&M. These creeks head on the eastern slopes of the Egan Mountain Range. Waters from the Kennecott Mines at Ruth, Nevada, drain into Robinson Canyon above the City of Ely. This source is unreliable. The water flowing in Robinson Creek is meager. The normal flow of Murry Creek, according to proof of beneficial use under Application 339, is approximately 10.5 c.f.s. Robinson Canyon is fed by small springs and spring run-off. High precipitation and heavy rains occurring throughout the years have caused considerable damage to the City of Ely.

Appropriations of Water:

The following are appropriators of water of record in this office, excluding Applications 15613 and 17061. The sources of water in these two applications are referred to as "stream systems" in protests filed by James T. Elliott and Albert Romeo.

Certificate 1085 issued December 16, 1924, to Ely Water Company under Application 338. This certificate was issued for 2.298 c.f.s. or 689.4 acre-feet per season of the waters of Murry Creek and Springs diverted at points in the east part of NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 10, T. 16 N., R. 63 E., M.D.B.&M., to irrigate 229.8 acres of land within portions of Sections 2, 3, 10, and 11, T. 16 N., R. 63 E., M.D.B.&M. (Georgetown Ranch). Period of use of water is from April 1 to October 1 of each year and the date of priority is January 19, 1907. This right was assigned on July 1, 1946 to City of Ely.

Certificate 1086 issued December 16, 1924, to Ely Water Company under Application 339. This certificate was issued for 11.0 c.f.s. of the waters of Murry Creek and Springs diverted at a point in the north part of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 29, T. 16 N., R. 63 E., M.D.B.&M., for power and municipal purposes. Water is conveyed to a concrete reservoir within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 16, T. 16 N., R. 63 E., M.D.B.&M., where it is stored for power and municipal purposes. Power plant is situate in NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 16. From this reservoir water is fed to water distribution system in Ely, Central Ely and East Ely in Sections 15 and 16, T. 16 N., R. 63 E., M.D.B.&M., for general municipal supply purposes. This right was assigned on July 1, 1946, by Ely Water Company to the City of Ely.

Certificate 2511, issued March 9, 1940, under Application 7650 to Ely Water Company. This certificate was issued for 2.0 c.f.s., or 717 acre-feet for the season, of the waters of Murry Creek diverted at a point in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 10, T. 16 N., R. 63 E., M.D.B.&M., to irrigate 355.3 acres of land within Section 16, T. 16 N., R. 63 E., M.D.B.&M., during the period October 1 to March 31 of the following year of each year. The priority of this right is February 26, 1926. This right was assigned July 1, 1946 by the Ely Water Company to the City of Ely.

Certificate 2796, issued July 5, 1944, under Application 9404 to Nick and Louise Yrazabal. This certificate was issued for 0.002 c.f.s. of the waters of Watson Spring diverted at a point in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 12, T. 16 N., R. 62 E., M.D.B.&M., for irrigation and domestic purposes, to irrigate 0.20 acres of land in NW $\frac{1}{4}$ SE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 12, T. 16 N., R. 62 E., M.D.B.&M. The period of use is the year around and the priority of appropriation is January 22, 1931.

Stipulations in this file dated November 9, 1931, covering Applications 9404 and 9742 recognize the right of Natale Lusetti to water not more than sixty head of cattle while being run in connection with his dairy at Lane City. Water to be piped to trough. Watson Spring is tributary to Robinson Canyon.

Certificate 2920, issued January 16, 1946, under Application 9492 to William J. Walker. This certificate was issued for 0.0129 c.f.s., or about 3.90 acre-feet per season, of the waters of Watson Spring and waters from Ruth Mine diverted at a point in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 12, T. 16 N., R. 62 E., M.D.B.&M., to irrigate 1.29 acres of land in portions of SE $\frac{1}{4}$ Sec. 12, T. 16 N., R. 62 E., M.D.B.&M. The period of use is from June 1 to October 1 of each year under a priority of appropriation of June 29, 1931. Agreement September 4, 1931 is to effect that Nevada Consolidated Copper Company is not obligated, etc., to continue pumping, etc. Duty of water under this certificate is 3.90 acre-feet per season.

Permit 15354 issued to Albert Romeo on June 27, 1956, for 3.5 c.f.s. (or a yearly duty of 4.0 acre-feet of land irrigated) of the waters of Robinson Canyon Channel and tributaries, to be diverted at a point in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 14, T. 17 N., R. 63 E., M.D.B.&M., (Same point as 15355) to irrigate 320 acres of land in portions of Sections 1 and 2 T. 17 N., R. 63 E., M.D.B.&M., and a portion of Section 36, T. 18 N., R. 63 E., M.D.B.&M. This application was filed in connection with U. S. Bureau of Land Management Desert Land Application NEV. 016138. This was allowed May 27, 1955. Date of priority of Application 15354 is October 26, 1953, and the period of use is the year around. (City of Ely acquired this right August 22, 1962, and withdrew the permit January 25, 1963.)

Permit 15355 issued to James T. Elliott on June 27, 1963, for 3.5 c.f.s. (or yearly duty of 4.0 acre-feet per acre of land irrigated) to be diverted at a point in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 14, T. 17 N., R. 63 E., M.D.B.&M., (Same point as 15354) to irrigate 320 acres of land in a portion of Section 1, T. 17 N., R. 63 E., M.D.B.&M., and a portion of Section 6, T. 17 N., R. 64 E., M.D.B.&M. Priority is October 26, 1953, and the period of use is year around. This permit is for the water pumped from Deep Ruth Shaft, Kellinsky and Star Pointer Mine Shafts, and waste water and sewage water from the New Ruth Town-site, which flows down Robinson Canyon Channel and joins Murry Channel in S $\frac{1}{2}$ Section 16, T. 16 N., R. 63 E., M.D.B.&M., and continues in the natural channel to the point of diversion. Permit issued with the understanding that any part of the right granted, which is made up of abandoned water, does not constitute a permanent right and does not in any manner obligate the Kennecott Copper Corporation to continue the waste and abandonment as it now exists.

Application 15355 was filed in connection with U. S. Bureau of Land Management Desert Land Application NEV-016137, which was allowed May 27, 1955.

(City of Ely acquired Application 15355 on August 23, 1962, and then withdrew it on January 25, 1963).

Application 15558 filed March 18, 1954, by City of Ely to appropriate 11.1 c.f.s. of the waste water (Robinson and Murry Canyon overflow ditch). This water is perhaps that which comes from the mining operations of the Kennecott Copper Corporation.

The point of diversion of this water is within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 10, T. 16 N., R. 63 E., M.D.B.&M., and the land to be irrigated is 510 acres within portions of Sections 2, 3, 10, and 11, T. 16 N., R. 63 E., M.D.B.&M. (Georgetown Ranch).

Ruling dated May 25, 1956, overruled protests against the granting of Applications 15354 and 15355 and that Application 15558 be held in abeyance for a reasonable length of time, pending proof by the applicant that there is water available in the source in excess of that required to satisfy existing rights and the rights herewith granted under Applications 15534 and 15535.

Application 20811, filed October 23, 1962, to appropriate 5.0 c.f.s. of the waters of Robinson Canyon to irrigate 600 acres of land, has not been published.

Summary of Water Appropriations:

Certificate 1085 Application 338, City of Ely, Murry Creek
229.8 acres, 2.298 c.f.s., 689.4 acre-feet.

Certificate 1086 Application 339, City of Ely, Murry Creek
and Springs, Power and Municipal 11.00 c.f.s.

Certificate 2511 Application 7560, City of Ely, Murry Creek
355.3 acres, 2.00 c.f.s., 717.00 acre-feet.

Certificate 2796 Application 9404, Nick and Louise Yrazabal
Watson Spring, 0.20 acres, 0.002 c.f.s.,
1.45 acre-feet, basis of 365 days.

Certificate 2920 Application 9492, William J. Walker, Watson
Spring and Ruth Mine Water, 1.29 acres,
0.0129 c.f.s., 3.90 acre-feet.

Permit 15354 Albert Romeo, Robinson Canyon Channel and
Tributaries. Water from Kennecott Copper
Corporation Mines, 320 acres, 3.5 c.f.s.,
4.0 acre-feet per acre.

Permit 15355 James T. Elliott, Robinson Canyon Channel
and Tributaries. Water from Kennecott
Copper Corporation Mines, 320 acres, 3.5
c.f.s., 4.0 acre-feet per acre.

Pending Applications:

15558 City of Ely Waste Water (Robinson and Murry
Canyon overflow ditch) 510 acres, 11.1 c.f.s.

15613 City of Ely, waste water. (Ely sewer outfall)
900 acres, 13.0 c.f.s.

17601 City of Ely Outfall of the Ely City Sewer
System, 260 acres, 2.5 c.f.s.

Total appropriation under certificates for irrigation purposes
is 4.3129 c.f.s.; 1,411.75 acre-feet for 586.59 acres. These figures
do not include 11.00 c.f.s. for power and municipal purposes under
Certificate 1086.

Although the developed water from the mining operations is abandoned into Robinson Canyon and becomes a part of the natural flow, it is not a reliable water source and does not constitute a permanent right to the appropriator in view of the fact that the mining company is not obligated to continue the waste and abandon the water in any channel.

Total appropriation under pending application is 26.60 c.f.s. for the irrigation of 1,670.00 acres of land.

The appropriation of water by the City of Ely for irrigation purposes is confined within an area of 11,000 acres, known as the Georgetown Ranch.

Water applied for under Applications 15613 and 17061 by the City of Ely, is for supplemental purposes on existing rights and for the irrigation of new lands.

By assignments and applied rights, the City of Ely, Nevada, is at present the owner of all of the waters flowing in Murry Creek and Robinson Canyon, except the rights under Certificates 2796 and 2920 in the names of Nick and Louise Yrazabal and William J. Walker, respectively.

OPINION

Existing rights are entitled, under their respective priorities, to the waters of the natural channels. The waters flowing in the natural channels are augmented by the rejected or abandoned waters from the mining operations by the Kennecott Copper Corporation at Ruth, Nevada. Artificial water draining into these natural channels becomes part of the natural flow and subject to diversion by existing rights under their respective priorities. It is the opinion of this office that the abandoned waters flowing in Robinson Canyon and Murry Creek are part of the stream system and are required to satisfy existing rights of protestants.

The outflow from the City of Ely does not enter the stream system but is diverted into a ditch which conveys the water to the place of use for irrigation purposes at the Georgetown Ranch.

The sewage water developed by the City of East Ely is the property of this City. It is our opinion that the City of East Ely is in no way obligated to continue the non-use of this water and that so long as the water remains in its possession it would have the right to its use by making proper application to the State Engineer.

It is the further opinion of this office that there is under the existing conditions unappropriated water.

RULING

The protests to the granting of Applications 15613 and 17061 are herewith overruled on the grounds there is at present unappropriated water in the source, and that the granting thereof will not impair existing rights or be otherwise detrimental to the public welfare. Upon receipt of the statutory permit fees, permits will be issued under each application, subject to the provisions and limitations:

The permits are issued subject to existing rights with the understanding that any part of the right granted, which is made up of artificial and temporary but not from a natural stream, does not constitute a permanent right and does not in any manner oblige the City of Ely to continue the outflow and waste as it now exists.

Respectfully submitted,



ELMO J. DERICCO
State Engineer

Dated this 4th day of
October, 1963.

FND