

IN THE MATTER OF APPLICATION 21570)
FILED ON OCTOBER 7, 1963 BY CLARA)
ALBERTA RAY AND THEODORE T. RAY TO)
APPROPRIATE WATER FROM REVERT)
SPRINGS (BEATTY SPRINGS) IN NYE)
COUNTY, NEVADA.)

R U L I N G

General:

Clara Alberta Ray and Theodore T. Ray filed Application 21570 on October 7, 1963 to appropriate 5.0 c.f.s. from Beatty Municipal Springs, sometimes known as Revert Springs.

Application 21570 is to appropriate 5.0 c.f.s. to be diverted within the Southeast Quarter (SE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section 5, Township 12 South, Range 47 East, M.D.B.&M. or at a point from which the Southwest corner of said Section 5 bears S. 63° 28' 30" W., a distance of 2,550.00 feet.

The place of use under this application is within portions of Section 7, Township 12 South, Range 47 East, M.D.B.&M.

The water applied for under Application 21570 is for municipal and domestic use.

Application 21570 was protested April 2, 1964 by Arthur, Robert A., Norman L. Revert and A. Revert Trust on the grounds to-wit:

- (a) That the water which forms the subject matter of this application is not public water and is not open to appropriation.
- (b) That your protestants are owners of all of the water of the said Beatty Municipal Springs, sometimes known as Revert Springs; that the said protestants have a vested right to such water, and that they and their predecessors in interest have owned said water for many years last past and, in point of time, prior to 1905; that, in addition, your protestants have a certificated right to such water.
- (c) That ever if such water were available for appropriation, which it is not, the applicants do not show how they would put the same to beneficial use.

A formal hearing of the matter of Application 21570 was held on the 16th day of September, 1965 in Tonopah, Nevada. The hearing was held in order to provide the Nevada Division of Water Resources with information in regard to the application and the points of protest to the application.

Present for the hearing were:

Ralph L. Denton, Counsel for the protestants;
Cameron M. Batjer, Counsel for the applicants;
George W. Hennen, State Engineer;
Roland D. Westergard, Assistant State Engineer;
Larry Reynolds representing the Division of
Water Resources.

The witnesses were R. O. Comozzi, Arthur Revert, William P. Beko, John M. Way, and Clara Alberta Ray.

Opinion:

Evidence presented at the Tonopah hearing consisted of both documented and hear-say evidence. From this evidence there is no question that a man by the name of Beatty, sometimes called Old Man Beatty, had squatted on land on which the Beatty Springs is located prior to the year of 1905. While he was in squatters possession of the land and spring, there is no doubt that he initiated a vested water right on the spring in some magnitude. From the evidence presented there is some indication as to this magnitude. However, for the purpose of the ruling, it is not necessary to pursue this further. (R. O. Comozzi, John M. Way, testimony; Exhibit C).

Beatty sold the ranch and vested water right to the Bullfrog Water, Light and Power Company for the sum of \$10,000.00. (Exhibit A, Exhibit 9, and Arthur Revert's, testimony).

Mr. John K. Brunk homesteaded the property that Beatty had sold to the Bullfrog Water, Light and Power Company some time after Beatty had made the original sale to the Bullfrog Company. (Exhibit 9).

Mr. John K. Brunk received a patent June 7, 1913 from the United States of America for the Southwest Quarter (SW $\frac{1}{4}$) of Section 5, Township 12 South, Range 47 East, M.D.B.&M. together with all the rights, privileges, immunities, and appurtenances of whatsoever nature, thereunto belonging, under the said claimant and to the heirs and assigns of the said claimant forever; subject to any vested and acquired water rights for mining, agricultural, manufacturing, or other purposes, and rights, as may be

recorded and acknowledged by the local customs, laws and decisions of courts and there is reserve from the lands hereby granted a right-of-way thereon for ditches or canals constructed by the authority of the United States. (Exhibit 5).

The Bullfrog Water, Light and Power Company put the water they purchased from Beatty to beneficial use. (Exhibit A, Exhibit 9, Exhibit C, Exhibit B, and Arthur Revert's testimony).

On January 20, 1915 the Bullfrog Water, Light and Power Company leased to the Indian Springs Water Company for a period of two years, terminating January 20, 1917, all of those certain springs, water and water rights of the Bullfrog Water, Light and Power Company situated being and have their course and source in Section 5, Township 12 South, Range 47 East, M.D.B.&M., Nye County, State of Nevada together with all the easements and right-of-ways, etc., as described in Book R, Miscellaneous, Page 340, File No. 3199, Nye County.

On July 21, 1919 L. E. Glass, County Treasurer, sold at public auction for the second half of the taxes for the year 1918 the laterals of water system in the Town of Beatty, consideration \$5.87, assessed to the Bullfrog Water, Light and Power Company. (Tax Deed File No. 12915, Recorded Page 40 of Book 36 of Deeds).

When Brunk owned the Southwest Quarter (SW $\frac{1}{4}$) of Section 5, Township 12 South, Range 47 East, M.D.B.&M., the pipe line from Beatty Springs was in use and was not under his control. (Exhibit 9).

On March 27, 1913 E. E. Palmer and E. M. Palmer acquired the Beatty Ranch from John K. Brunk. (Exhibit 5, Exhibit 9).

Sometime after March 27, 1913 and before June 13, 1922, Elzie E. Palmer took over the pipe line from Beatty Springs and furnished the Town of Beatty with water for awhile. The time of the take-over or how it was taken over is not stated. However, the Bullfrog Water, Light, and Power Company was in possession of the line and doing business January 20, 1915. (File 3199, Recorded Page 340, Book R, Miscellaneous, Exhibit 9, Exhibit 5).

Sometime between January 20, 1915 and July 1919, the Bullfrog Water, Light and Power Company stopped operations in the Beatty area. (Exhibit 9, File 3199, Recorded Page 340, Book R, Miscellaneous).

There was no evidence presented that showed the vested water right of the Bullfrog Water, Light and Power

Company was sold by them or that any purchase of it was made. Therefore, the vested water right would remain in the name of the Bullfrog Water, Light and Power Company or else it would become abandoned and revert back to the State of Nevada. The State Engineer's Office takes the stand from the evidence presented that the vested right was abandoned by the Bullfrog Water, Light and Power Company due to the following facts:

1. Bullfrog Water, Light and Power Company ceased operations in the area.
2. They left the community.
3. They allowed their property to be sold for delinquent taxes.

The only way a right could be obtained on the Beatty Spring after March 1, 1905 is by application to the State Engineer's Office. During the time of the hearing a point was raised in regard to securing a vested water right on certain springs in the State of Nevada up until the time the 1913 water law was enacted. This point has no bearing on the case at point or will it be ruled on at this time because of the evidence given by the protestant's witness, Elzie E. Palmer. A quote from his testimony is:

"Well, the water from the spring run and went off the river and then that run right on into the edge of town."

There is no doubt the Bullfrog Water, Light and Power Company did not use the water from Beatty Springs after a certain date which appears to be somewhere between 1915 and 1919 and that Mr. Brunk and all of the other people up until 1930 when the water company in Beatty was sold to Mr. Revert's father, continued to use the water from Beatty Springs openly, notoriously, and without any question at all. The State Engineer's Office takes the stand that there was no party or right to adverse other than the State of Nevada and that the State of Nevada cannot be adversely to obtain a water right. The only way a water right can be obtained from the State of Nevada after March 1, 1905 is by application.

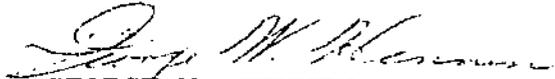
The chain of title to the vested right for water from the Beatty Springs was initiated before 1905 by a Mr. Beatty, sometimes known as Old Man Beatty, and which was sold to the Bullfrog Water, Light and Power Company. The chain of title was broken and the vested right of the water reverted back to the State of Nevada when the Bullfrog Water, Light and

Power Company ceased operations in the Beatty Area.

Ruling:

The protest to the granting of Application 21570 is herewith overruled on the grounds that the granting of the application will not be detrimental to the public welfare. The permit shall be issued subject to all existing rights on the source upon the receipt of the statutory permit fee. Nothing in this ruling shall be taken to grant any rights of egress, and ingress to the applicant on public, private, or government lands.

Respectfully submitted,



GEORGE W. HENNEN
State Engineer

Dated this 18th day of
January, 1966.

GWH:wij