

IN THE MATTER OF APPLICATION NO. 12711)
IN NAME OF HOLMAN F. BARLOW AND ARTHUR)
R. BARLOW TO APPROPRIATE THE WATERS OF) RULING
DUTCH CREEK, MINERAL COUNTY, NEVADA.)

Application No. 12711 was filed November 4, 1948 by Holman F. Barlow and Arthur R. Barlow to appropriate 1.0 c.f.s. of the waters of Dutch Creek for power and domestic purposes. The proposed point of diversion is within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 20, T. 9 N., R. 29 E., N.D.M.

On January 10, 1949 a protest was filed to the granting of a permit by N. C. Gillette, Captain, U.S.N. Commanding Officer, Naval Ammunition Depot, Hawthorne, Nevada. The protest reads as follows:

"The Naval Ammunition Depot, Hawthorne, Nevada, has of this time a Water Development Program under way and it is the intent to develop North Cottonwood and Dutch Creeks and install a pipe line and carry the waters of the above creeks to a distributing reservoir and to be used for domestic and industrial purposes; further that the existing State Application #4705 for .40 c.f.s. in the name of A. H. Barlow is sufficient for the needs of Holman F. and Arthur R. Barlow; further that the Secretary of the Navy has appropriated funds for the above Water Development Program and further declared this an immediate Military Emergency Defense Project. Cottonwood and Dutch Creeks are entirely within the United States Naval Ammunition Depot boundaries."

By letter dated 24 August 1949 and signed by J. S. Crenshaw, the above mentioned protest was modified in the following manner:

"The Navy now desires to modify that protest to the extent that no permit is granted over and above the absolute minimum required to operate Mr. Barlow's Pelton wheel. That amount of water will depend upon the characteristics of the water wheel and the hydraulic pressure in the supply line. It is understood that Mr. Barlow now has installed a pipe line which affords 300' head at the proposed site of the water wheel. At that head, approximately 0.45 c.f.s. flow would be required to operate his 7.5 KW generator at full load. Of course, if the Navy is assigned sufficient water rights in this stream to justify the installation of the proposed pipe line, water could be delivered to Mr. Barlow under a head of approximately 850'. The Manufacturer, Pelton Water Wheel Company, has advised that 0.19 c.f.s. flow under that head would be required as a minimum and probably 0.21 c.f.s. due to the fact that this wheel is a very old model."

On October 26, 1949 Assistant State Engineer, Hugh A. Shanberger, met with the applicants and representatives of the Navy at Hawthorne at which time the entire matter was discussed and a proposal was offered which at that time met with the approval of both applicant and protestant.

On April 7, 1949 the U. S. of America, Naval Ammunition Depot, filed Application No. 12877 to appropriate 1.0 c.f.s. of the waters of Dutch Creek for municipal and domestic purposes. A protest to the granting of a permit under said application was filed October 27, 1949 by Holman F. and Arthur R. Barlow.

Dutch Creek rises on the easterly slope of Mt. Grant and flows into Walker Lake. The only recorded water right on this creek is evidenced by Certificate No. 1583 issued under Permit No. 4705 in the amount of 0.126 c.f.s. for the irrigation of 12.6 acres of land located within the SW $\frac{1}{4}$ of Section 16, T. 9 N., R. 29 E. This water right originally in the name of Mrs. M. E. Spencer is now owned by Holman F. and Arthur R. Barlow. The Barlows also own Lots 3 and 4 and the W $\frac{1}{2}$ of SW $\frac{1}{4}$ Section 16, T. 9 N., R. 26 E. It should be noted that in the protest the amount of 0.40 c.f.s. was mentioned in connection with Application No. 4705. This is in error as the right under said permit is limited to 0.126 c.f.s.

In the protest filed by the Navy, mention is made of a water development program and the intention to install a pipe line to convey the waters of Dutch and Cottonwood Creeks to a distributing reservoir. This program was discussed at the meeting of October 26, 1949. It is our understanding that such program is now under way and a pipe line has been installed to convey the waters of Cottonwood Creek. This pipe line to Cottonwood Creek crosses the Barlow property.

The tentative agreement reached at the meeting of October 26 was based on the utilisation of water from this pipe line and the high head available which would reduce the amount of water needed by the applicant for the generation of power. The amount of water necessary for the generation of 7.5 k.w. with the head contemplated under Application No. 12711 would be 0.45 c.f.s. which amount would include the 0.126 c.f.s. under Certificate No. 1583. If the water was delivered from the Navy pipeline, and which would have a pressure of about 325 pounds per square inch, the amount necessary to develop 7.5 k.w. of power would be 0.22 c.f.s. or 0.094 c.f.s. in excess of their 0.126 c.f.s. already acquired. The tentative agreement was as follows:

That Application No. 12711 be approved for 0.45 c.f.s. (which includes the 0.126 c.f.s. under Certificate No. 1583) for power purposes with the understanding that if within a reasonable time the Naval Ammunition Depot is able to furnish Dutch Creek water from their pipe line in the amounts and heads hereafter set forth, then the amount of water under such permit may be reduced as follows:

The Navy to deliver to Applicants from a pipe line at approximate elevation of 5155 feet on Dutch Creek 0.22 c.f.s. of water or sufficient water to produce 7.5 kilowatts from September 15 to July 1 of the following year and during the period July 1 to September 15, the Navy will deliver, under an approximate head of 759 feet, a minimum of 0.126 c.f.s. and any additional water that may be in excess to the needs of the Navy up to 0.22 c.f.s.

The advantage of this latter arrangement is that during the usual dry period from July 1 to September 15 the applicants, under Application No. 12711, would receive 0.126 c.f.s. which is the amount they are already entitled to under Certificate No. 1583. During the balance of the season they would receive 0.22 c.f.s. or 0.094 c.f.s. above their present right.

Records kept by the Navy of the flow of Dutch Creek at the approximate location of their pipe line at elevation 5155 indicates that during July and August of 1949 the average flow was about 0.26 c.f.s. If 0.126 c.f.s. was diverted to satisfy the rights under a permit granted on Application No. 12711, there would be left available about 100,000 gallons per day for utilization by the Depot.

Under such an agreement this office then would be able to grant a permit under Application No. 12877 subject to existing rights.

On February 26, 1951 an agreement was signed by applicants and protestant which embodied in general the provisions provided for in the tentative agreement. This agreement reads as follows:

"AGREEMENT"

"This agreement, entered into this 26 day of Feb., 1951, by and between the UNITED STATES OF AMERICA, Department of the Navy, represented by the Chief of the Bureau of Yards and Docks, party of the first part, and HOLMAN F. BARLOW and CATHERINE M. BARLOW, husband and wife, and ARTHUR R. BARLOW and MARTHA G. BARLOW, husband and wife, of Hawthorne, Nevada, parties of the second part:

WITNESSETH:

WHEREAS, party of the first part, as owner of certain property in Mineral County, Nevada, known as the United States Naval Ammunition Depot, Hawthorne, Nevada, is entitled to the beneficial use of the waters of Dutch Creek, Mineral County, Nevada, and has planned the construction of a pipe line from Dutch Creek to tie into the waters of a stream known as Cottonwood Creek to adequately serve the aforesaid Naval Ammunition Depot; and

WHEREAS, parties of the second part, as owners of certain lands in Mineral County, Nevada, are entitled to the beneficial use of the waters of said Dutch Creek; and

WHEREAS, parties of the second part have filed an application (No. 12711) with the Nevada State Engineer for permission to appropriate for power purposes 1.00 cu. ft. per second of water from Dutch Creek; and

WHEREAS, the party of the first part, objects to the granting by the Nevada State Engineer of the application of the parties of the second part for the appropriation of 1.00 cu. ft. per second of water from Dutch Creek; and

WHEREAS, the Nevada State Engineer has preliminarily determined to grant the parties of the second part a permit for 0.45 cubic ft. per second of water under Application No. 12711, which amount shall be the total amount of waters of Dutch Creek allocated to the parties of the second part and shall include the 0.126 cu. ft. per second of water previously allocated to said second parties under Certificate No. 1583 issued by the Nevada State Engineer; provided, however, that all necessary construction work and steps necessary to prove the present application No. 12711, shall have been accomplished by the parties of the second part within a period of three (3) years from the date of the issuance of a permit under Application No. 12711 by the Nevada State Engineer.

NOW, THEREFORE, in consideration of the mutual benefits and advantages to be derived therefrom, the parties hereto do mutually agree:

1. That the parties of the second part shall delay for a period of two (2) years in commencing the work of diversion of additional waters from Dutch Creek under Application No. 12711 so as to enable the Department of the Navy to thoroughly observe the flow of Dutch Creek and determine whether installation of a pipe line to divert the waters of Dutch Creek to serve the Hawthorne Naval Ammunition Depot, as planned, will be economically warranted; provided, however, that if within the two-year period the Navy Department shall determine not to install the proposed pipe line, then, and in that event, the Navy Department will not protest the granting by the Nevada State Engineer of second parties' Application No. 12711 for additional water for power purposes.

2. That if it is determined by the Department of the Navy to construct the contemplated Dutch Creek pipe line, then, and in that event, provisions will be made for the parties of the second part to take the following amounts of water from the pipe line at the pressures and during the periods specified, which amounts, however, shall be limited to and never be more than the cu. ft. per second flow of Dutch Creek at the time of taking the water, and,

further, that the limits of the appropriation of the parties of the second part shall be reduced to the specified amounts as follows:

a. Not less than 0.22 cu. ft. per second of water at a minimum pressure of 325 pounds per square inch (or sufficient to generate 7.5 KW) during the period of 15 September of any year through 1 July of the following year.

b. Not less than 0.126 cu. ft. per second of water at a minimum pressure of 325 pounds per square inch (or sufficient to generate 6 KW) during the period 1 July through 15 September of each year.

c. If the aforementioned amounts of water can not be delivered at the pressure of 325 pounds per square inch from the Navy designed pipe size which may be installed, the maximum pressure possible to be obtained from such designed pipe size shall be acceptable to the parties of the second part.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the date above set forth.

UNITED STATES OF AMERICA

by s/ Jack E. Cochran
By direction of the Chief of the
Bureau of Yards and Docks, act-
ing under the direction of the
Secretary of the Navy.

s/ Arthur R. Barlow

s/ Martha G. Barlow

s/ Norman F. Barlow

s/ Catherine M. Barlow
Parties of the Second Part.

Approved:

s/ Wm. J. Cashill
Special Attorney
representing the Office of the
Attorney General, U. S. Dept.
of Justice."

RULING

In view of the agreement of February 26, 1951, a permit can be granted under Application No. 12711 in the amount of 0.45 c.f.s. for power purposes subject to the provisions set forth in said agreement and particularly subject to the following provisions:

1. That the 0.45 c.f.s. granted under this application includes the 0.126 c.f.s. issued under Certificate No. 1533;
2. That if the Department of the Navy (Protestant herein) constructs the Dutch Creek pipe line provision is to be made for the permittee under Permit No. 12711 to take water from said pipe line in the following amounts:

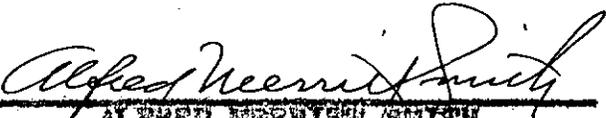
Not less than 0.22 cu. ft. per second of water at a minimum pressure of 325 pounds per square inch (or sufficient to generate 7.5 KW) during the period of 15 September of any year through 1 July of the following year.

Not less than 0.126 cu. ft. per second of water at a minimum pressure of 325 pounds per square inch (or sufficient to generate 6 KW) during the period 1 July through 15 September of each year.

In such an event the amount of water the permittee will be entitled to under Permit No. 12711 will be reduced to conform to such amounts:

3. If the aforementioned amounts of water can not be delivered at the pressure of 325 pounds per square inch from the Navy designed pipe size which may be installed, the maximum pressure possible to be obtained from such designed pipe size shall be acceptable to the parties of the second part; and
4. In the event that the Department of the Navy, after a two year study of the flow of Dutch Creek, determines not to install the proposed Dutch Creek pipe line, then provision No. 2 under this ruling does not apply.

Respectfully submitted,


ALFRED MERRITT SMITH
State Engineer

April 24, 1951