

IN THE MATTER OF APPLICATIONS 26609 )  
AND 26610 TO CHANGE THE POINT OF )  
DIVERSION OF THE WATERS OF AN UNDER- )  
GROUND SOURCE HERETOFORE APPROPRIATED )  
BY CAPPAERT ENTERPRISES IN NYE COUNTY, )  
NEVADA. )

R U L I N G

GENERAL:

Application 26609 was filed on March 14, 1972 by Cappaert Enterprises to change the point of diversion of 6.0 c.f.s., but not to exceed 500 acre feet per year of the waters of an underground source heretofore appropriated under Permit 25553. The existing point of diversion is located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 7, T.18S., R.51E., M.D.B.&M. The proposed point of diversion is within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 8, T.18S., R.51E., M.D.B.&M. The place of use is listed as being the W $\frac{1}{2}$ SW $\frac{1}{4}$  Section 8; and the W $\frac{1}{2}$ NW $\frac{1}{4}$  Section 17, T.18S., R.51E., M.D.B.&M. The water is to be used for irrigation and domestic purposes.

Application 26610 was filed on March 14, 1972 by Cappaert Enterprises to change the point of diversion of 6.0 c.f.s., but not to exceed 200 acre feet per year of the waters of an underground source heretofore appropriated under Permit 25551. The existing point of diversion is located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 7, T.18S., R.51E., M.D.B.&M. The proposed point of diversion is within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 8, T.18S., R.51E., M.D.B.&M. The place of use is listed as being the NE $\frac{1}{4}$ SW $\frac{1}{4}$  Section 8, T.18S., R.51E., M.D.B.&M. The water is to be used for irrigation and domestic purposes.

Protests to the granting of these applications were filed on June 20, 1972 by the State of Nevada, Department of Fish and Game; and on June 23, 1972 by the National Park Service.

The grounds of the protest of the State of Nevada Department of Fish and Game are as follows: "The Ash Meadows are of Nye County contains several natural warm springs in which are located a number of small endemic fishes that are listed as rare and endangered by both the U. S. Bureau of Sports Fisheries and Wildlife and the Nevada Department of Fish and Game. Included in the area is the Devil's Hole pupfish, one of the rare species involved, which has gained nationwide attention because of its precarious existence. It is already quite evident that do to pumping in the basin, several of the springs have been adversely affected and the water level in Devil's Hole is declining. Additional pumping will only aggravate the problem and create greater problems than are now occurring. Under section 503.584 Nevada Revised Statutes, it is the only duty and responsibility of the Nevada Department of Fish and Game to take the steps necessary to protect and perpetuate the population and habitat of native fishes

that are threatened with extinction. Therefore, in compliance with Nevada Law, it is requested that this application be denied, perhaps until such time as the entire pupfish problem receives some solutions."

The grounds of the protest of the National Park Service are as follows: "Reference is given to the report, 'Hydrogeology of the Devil's Hole area, Ash Meadows, Nevada,' by William Fiero and G. B. Maxey; on the basis of the information presented in this report, it is indicated that further lowering of the water level in Devil's Hole, Ash Meadows, Nevada, would result from the pumping of underground water in this area. This has been largely substantiated by the recent monitoring of this water level by the U. S. Geological Survey. This in effect would result in further threat of extinction to the already endangered native fishes of Genus Cyprindon (Desert Pupfish) which inhabit Devil's Hole. In recent months, other springs in the area which provide the habitat for these native fishes have shown indications of marked decreased flow as a result of the pumping of the underground water sources. Should the subject application to appropriate water be approved, it can be expected that grave consequences to the ecology of this area will result. On the basis of this information, the National Park Service must protest the appropriation of any additional public waters from underground sources in the Ash Meadow-Devil's Hole area."

The places of use under Applications 26609 and 26610 are covered by numerous other rights. Applications 26609 and 26610 are both applications to change the point of diversion of prior existing rights. The changes proposed therein do not constitute an expansion of acreage nor will they provide for additional permitted withdrawal of water from the groundwater basin. In addition, the applications propose to change a total of 12.0 c.f.s., but not to exceed 700 acre feet per year withdrawal to a distance further from the Devil's Hole National Monument.

#### RULING

The protests to the granting of Applications 26609 and 26610 are herewith overruled on the grounds that their granting will not adversely affect prior existing rights. Permits will be granted under Applications 26609 and 26610 subject to existing rights.

Respectfully submitted,

  
Roland D. Westergard  
State Engineer

RDW:BLR:jn

Dated this 21st

day of September 1972