

IN THE MATTER OF APPLICATION 27855 )  
FILED BY A. CORNELL AND GRACE CORNELL )  
TO APPROPRIATE WATER FROM BIG SPRING, )  
AMARGOSA DESERT, NYE COUNTY, NEVADA. )

R U L I N G

230

GENERAL:

Application 27855 was filed on October 23, 1973, by A. Cornell and Grace Cornell to appropriate 1.153 c.f.s. of water from Big Spring for irrigation (200 acres) and domestic purposes. Water is to be diverted from its source at a point within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  Section 19, T.18S.,R.51E., M.D.M. The place of use is described as 200 acres within the SE $\frac{1}{4}$ SW $\frac{1}{4}$  Section 24, and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$  and SE $\frac{1}{4}$ NE $\frac{1}{4}$  Section 25, T.18S.,R.50E., M.D.M. The period of use is to be from October 31 to April 1 of the following year.

Protests to the granting of Application 27855 were filed by Robert M. Tubb on January 24, 1974, by Richard Gordon Miller on January 28, 1974, and by The Nature Conservancy on January 28, 1974

The basis of the protest by Robert M. Tubb is that he holds Permit 25060 and has until April 2, 1975, to file Proof of Beneficial Use under this permit. Mr. Tubb believes he should be allowed to complete his application to beneficial use, then if there is any surplus water remaining at the source, the applicant could file another application to appropriate the remaining water.

The protest of Richard Gordon Miller states: "That the ground resources have been inadequately studied and that the naturally occurring springs and their biota have been given little consideration as to protecting Nevada's natural and unique resources. A. Cornell & Grace Cornell wish to add a further drain on the ground water resources, thus increasing the drain on the flow of the springs. This, despite the fact that one spring, Devil's Hole, has been considered high enough in the national interest to be made part of the Death Valley National Monument, another spring has been protected by the nation under the Bureau of

Land Management. The fish fauna living in Ash Meadows are considered endangered species by the nation and by the state. There are state and federal laws that express the nation's concern on the future of these species. It is incumbent upon all agencies, businesses and individuals to give credence to this concern.

WHEREFORE protestant prays that the application be denied and that the use of water herein claimed by protestant be confirmed and that an order be entered establishing said right and for such other relief as the State Engineer deems just and proper, namely that all waters presently sustaining the aquifers and the height-levels of water in the numerous hot springs of the Ash Meadows-Amargosa area including those at Big Springs and Devil's Hole be assigned to the Federal Government of the United States for protection in perpetuity and to insure the habitat quality and quantity of the endemic species of plants and animals."

The protest of The Nature Conservancy states that:

- "1. The protestor is the fee owner of that certain real property in the County of Nye, State of Nevada, known as Big Spring and described as follows: the SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  and the SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 19, T.18S., R.51E., M.D.B. and M. and water rights, if any, thereto belonging and appurtenanting.

Said real property acquired by Grant Deeds recorded June 22, 1973 in the County of Nye, State of Nevada in Book 164 at page 257 and at page 258.

2. Said Big Spring contains certain species of fishes, to wit: the Ash Meadow Dace (*Rhinichthys Osculus Nevadensis*), a species designated as endangered, and the Nevada Pupfish (*Cyprinodon Nevadensis Mionectes*), considered a rare species.
3. The protestor is a publicly supported non-profit corporation organized to preserve and conserve ecologically and environmentally significant natural land and ecosystems. The protestor is acting as the custodian of the above-named rare and endangered species, which it holds in the public trust.

4. The protestor is informed and has reason to believe that the diversion from Big Spring at 1.153 second feet will lower the level of Big Spring, exposing or limiting the breeding shelf for the above-named species and seriously diminishing their habitat, leading to extraordinary reduction in the number of said fish and greatly increasing the possibility of their extinction. Such action will irreparably harm the property rights of the protestor in and to Big Spring, said fishes and to the protestor's adjoining property. Such action will further violate the pre-eminent public policy in favor of preserving rare species found in state and federal law.
5. Diversion from Big Spring will constitute a trespass and interfere with the exercise of the protestor's property rights in its property surrounding Big Spring. The protestor contacted the State Water Engineer by telephone when negotiating with the former owners of Big Spring as part of a coordinated private and federal attempt to preserve the ecological niches and habitat of rare species. The protestor was informed at that time that any and all water rights on Big Spring constituted overflow rights with no right of the owner of said water rights to enter and extract water from Big Spring by artificial means of either pumping or lowering the height of the weir. In reliance upon said information, the protestor purchased the above-named property and did not make application for excess water rights, if any.
6. The protestor asserts that the use proposed for the public waters of the State of Nevada under this application is not beneficial but rather is unreasonable, uneconomical, and wasteful. The protestor is informed and believes that the requested diversion is for irrigation upon lands where no right to undertake irrigation exists.

7. The protestor is informed and believes that all water rights in, to and in any way associated with Big Spring have already been granted. The protestor was so informed in conversations with the State Water Engineer at the time protestor was negotiating to purchase Big Spring and in reliance thereon did not itself make application for any water rights in excess of those already granted."

Big Spring, also known as Deep Spring, is the source for the following water rights of record:

Permit 4200, Certificate 2251.

Date of Priority: October 21, 1916.

Owner of Record: Robert M. Tubb and George W. Tubb.

Amount: 2.3129 c.f.s. or 906.75 acre-feet per season to irrigate 231.29 acres.

Period of Use: April 1 to October 15 of each year.

Permit 24577 - To change the place of use of a portion of Permit 4200, Certificate 2251.

Date of Priority: October 21, 1916. (Same as Permit 4200.)

Owner of Record: Robert M. Tubb

Amount: 0.794 c.f.s. or 311.28 acre-feet per season to irrigate 724 acres.

Period of Use: April 1 to October 15 of each year.

Permit 8025, Certificate 2729.

Date of Priority: March 8, 1927.

Owner of Record: Ash Meadow Lodge, Inc.

Amount: 0.63 c.f.s. or 230 acre-feet per annum to irrigate 63.0 acres.

Period of Use: April 1 to October 31 of each year.

Permit 11384, Certificate 4484

Date of Priority: October 11, 1945.

Owner of Record: Mary Lou Hale (4/5) and Garland R. Love (1/5).

Amount: 1.50 c.f.s. but not to exceed 134.3 acre-feet per annum to irrigate 29.85 acres.

Period of Use: January 1 to December 31 of each year.

Permit: 25060  
Date of Priority: May 8, 1969.  
Owner of Record: Robert M. Tubb  
Amount: 2.0 c.f.s. but not to exceed a yearly duty  
of 5.0 acre-feet per acre to irrigate  
282.33 acres.  
Period of Use: January 1 to December 31 of each year.  
Proof of Beneficial Use: Due April 2, 1975.

According to Report No. 14, Ground-Water Resources -  
Reconnaissance Series, flow from Big Spring has varied from  
1122 gpm (reported in 1916) to 1036 gpm in August, 1962.  
The average of reported flows and measurements published in  
Report 14 is 1045 gpm or 2.328 c.f.s. The flow from the  
spring was 1.74 c.f.s. measured at the Capolletti weir  
approximately 100 yards downstream was reported on September  
10, 1973, by Larry C. Reynolds of the Division of Water  
Resources.

Existing rights to the water from Big Spring total  
6.4429 c.f.s. for the following periods of use:

April 1 - October 15, 2.3129 c.f.s. (Permit 4200 and  
24577)

April 1 - October 31, 0.63 c.f.s. (Permit 8025)

January 1 - December 31, 1.50 c.f.s. (Permit 11384)

January 1 - December 31, 2.0 c.f.s. (Permit 25060)

The record of flow from the spring indicates that  
there is not sufficient flow, at times, to satisfy the  
senior appropriator under Permit 4200. In addition, permits  
in good standing totaling 3.50 c.f.s. have been issued for  
water from Big Spring for use throughout the entire year.  
The record of flow would also indicate there is not sufficient  
flow to satisfy existing water rights during the non-irri-  
gation season.

RULING

Application 27855 is herewith denied on the grounds that the granting would adversely affect prior existing water rights.

Respectfully submitted,

  
Roland D. Westergard  
State Engineer

RDW:WJN:jw

Dated this 1st day of

April, 1974.