

IN THE MATTER OF APPLICATION 42972)  
FILED BY HORSE CREEK RANCH TO )  
APPROPRIATE THE WATERS OF HORSE )  
CREEK IN CHURCHILL COUNTY, NEVADA )

R U L I N G

INTRODUCTION

Application 42972 was filed on December 18, 1980, by Horse Creek Ranch, c/o Mr. Charles C. Chisholm and Mr. King L. Brown of Fallon, Nevada, to appropriate 10.0 cfs for irrigation and domestic purposes in the Dixie Valley Basin. The point of diversion is described as being within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  Section 12, T19N, R35E, MDB&M, and the place of use is described as being portions of the S $\frac{1}{2}$  SE $\frac{1}{4}$  Section 3; N $\frac{1}{2}$  NE $\frac{1}{4}$  Section 10; NW $\frac{1}{4}$  NW $\frac{1}{4}$ , E $\frac{1}{2}$  W $\frac{1}{2}$  and the SE $\frac{1}{4}$  Section 11; and the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 12, all in T19N, R35E, MDB&M. The period of use is given as January 1 to December 31 of each year.

Application 42972 was timely protested on March 27, 1981, by Frank W. Lewis on the following grounds:

"1. The waters of Horse Creek are fully appropriated. Said waters are the subject of existing certificate and permit rights obtained on application to appropriate waters made to the State Engineer of Nevada.

2. The granting of the subject application would permit the diversion of water for which valid prior and senior rights now exist.

3. Protestant is the owner and holder of permitted water rights which divert from the same source and said water rights will be impaired if the subject application is granted.

4. There are no waters available for appropriation from said source."

Protestant requests denial of Application 42972.

GENERAL

After notice to all parties, a hearing was held before the Division of Water Resources in Fallon, Nevada, on April 8, 1982, at which time the applicant and protestant, both represented by counsel, appeared in person.

The hearing was noticed as a hearing in the matter of the protest to Application 42972 filed by Horse Creek Ranch for use of the water of Horse Creek for irrigation and domestic purposes.

The Division of Water Resources was represented by Larry C. Reynolds, Chief, Adjudication and Surface Water Sections, and Gene Clock, Hydraulic Engineer. Ross de Lipkau, attorney, represented the applicant, Horse Creek Ranch. Harold Swafford, attorney, appeared for the protestant, Frank W. Lewis.

Two existing water rights on Horse Creek were put into the record.

1. Permit 1510, Certificate 6, for 0.28 cfs to be used for irrigation, domestic, mining, milling, and power purposes in the ownership of Frank W. Lewis.

2. Permit 9428, Certificate 2566, for 1.084 cfs to be used for irrigation of 108.4 acres in the ownership of Horse Creek Ranch.

Testimony was received by Donald E. Lewis, licensed water rights surveyor, on behalf of Frank W. Lewis who testified to a series of water measurements he took on Horse Creek from May 25, 1981, to September 27, 1981. The highest measurement on Horse Creek Ranch Property located downstream of the diversion point of Frank W. Lewis's right was recorded to be 405 gpm on May 25, 1981. The lowest was 84.5 gpm on August 30, 1981.

Upstream of the Horse Creek Ranch property, identified as the "Gap diversion", he recorded a high of 200 gpm on July 25, 1981. Shortly before the hearing on April 7, 1982, Mr. Lewis took a single measurement of 348 gpm at the same "Gap diversion" point. He testified that it was still "cold" from the snow still in the mountains.

Mr. Elmo De Ricco, testified for Mr. Lewis that although he was not familiar with Horse Creek, except for a recent inspection of the creek, it was his opinion that Horse Creek was "fully appropriated" with the forementioned existing rights.

In evidence on behalf of the applicant, Horse Creek Ranch, Mr. Ernest E. Muller, water rights surveyor, testified that he measured the water of Horse Creek in the latter part of May, 1979.

At that time, he found the flow to be "slightly over five cubic feet per second or 2,240 + gallons per minute by measurement from a pipe leading from a small dam located within the ranch boundaries.

He also estimated the flow to be between one cubic foot per second and one and one half cubic feet per second on another occasion about a month previous to the hearing.

Mr. Charlie Chisholm, applicant, testified that he acquired the Horse Creek Ranch in 1976. He said he had been familiar with the creek and property as far back as 1972. He identified the property of the present ranch to be 108.4 acres, as depicted in Permit 9428; and that he has applied for approximately 100 additional acres in adjacent Sections 3 and 10, T19N, R35E, as a Desert Land Entry. The proposed place of use of Application 42972 includes all the land described above.

Mr. Chisholm thought the total flow of Horse Creek and attributable springs was approximately 10 cfs as measured in 1979 by Mr. Muller.

Chisholm further testified that the total acreage would have to be irrigated by different means. One method would utilize an existing reservoir which would be enlarged and used for storage throughout the year.

It was determined by questioning the witness that the reservoir does not have a permit as required under statute, although it is higher than ten feet from the base.

The other method of irrigation would be by flooding from historic spring runoff periods.

Frank W. Lewis, protestant, testified that he has done "extensive drilling and development work" on the Wonder Mine over the last number of years. He stated it is his intention to re-establish the pipeline from the diversion on Horse Creek under Permit 1510, Certificate 6, to provide water for leaching and milling processes at the mine to recover gold and silver.

The pipeline was originally used for milling purposes and for domestic purposes at the townsite of Wonder from 1906 to 1920 when the mill was shut down for economic reasons.

At the onset of the hearing, Mr. Ross de Lipkau, attorney for Mr. Charles Chisholm, brought attention to a letter dated June 24, 1981, wherein he requested the State Engineer to declare Permit 1510, Certificate 6, abandoned, forfeited or both, "since the waters had not been used at the Wonder Mine for more than 50 years."

The hearing officer ruled that although the letter was contained in the official records brought into evidence at this hearing, the hearing was properly noticed only to consider the protest of Application 42972 as provided under NRS 533.365.

#### FINDINGS OF FACT

##### I

Horse Creek located in Dixie Valley is a perennial stream fed by snow accumulation and springs from nearby mountains. Evidence indicates the stream has been subject to severe flooding from sudden storms usually occurring in the spring of the year.

##### II

There is no conclusive evidence to indicate Horse Creek is fully appropriated under the existing certificated water rights (Permit Nos. 1510 and 9428). Application 42972 proposes to store excess water

from spring runoff and during off season irrigation periods. The protestant's senior water right is taken from a point located upstream from the proposed application in question and will not be affected by collection of flood waters on Horse Creek Ranch.

III

The hearing on April 8, 1982, was for the purpose of hearing the protest of Frank W. Lewis to Application 42972.

IV

There are no existing surface water rights located downstream on Horse Creek from the proposed point of diversion under Application 42972 except Permit 9428 owned by the applicant, Horse Creek Ranch.

V

A dam permit is required for the existing impoundment located on the Horse Creek Ranch.

CONCLUSIONS

I

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination (NRS 533.025 and 533.030(1)).

II

The testimony, evidence, and information available do not indicate that there will be any adverse effect on existing water rights if Application 42972 is permitted.

RULING

1. Application 42972 was filed and processed to a ready for action status in accordance with the procedures set out in NRS 533.

2. Substantial evidence on the record supports a finding that the proposed use of water of Horse Creek will not adversely affect existing rights and will be in the public interest and welfare.

3. The protest to Application 42972 is hereby overruled and a permit will be issued thereunder upon receipt in this office of an application for a dam permit for the existing structure on Horse Creek Ranch and upon receipt of the permit fees required by statute.

Respectfully submitted,



Peter G. Morros  
State Engineer

PGM/GC/ja

Dated this 3rd day  
of JUNE, 1983.