

IN THE MATTER OF APPLICATION 46138)
TO APPROPRIATE THE WATERS OF THE)
EAST FORK OF THE CARSON RIVER IN)
DOUGLAS COUNTY, NEVADA)

R U L I N G

INTRODUCTION

Application 46138 was filed by Mineop Corp., a Nevada Corporation, on September 14, 1982 to appropriate 400 c.f.s. of the waters of the East Fork of the Carson River for power purposes. The proposed point of diversion is within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, T.12N., R.20E., M.D.B.&M. The application proposes to return all water to the stream system within 100 feet of the point of diversion. No consumptive use of water will occur as a result of the subject application.

Application 46138 was timely protested on December 27, 1982, by Michael Springer on the following grounds:

"1) The pre-emptive status of Federal Energy Regulatory Commission Preliminary Permit application #6133-000 filed in July of 1982 by Michael Springer and Dr. James Boulden and the subsequent approval in January of 1983. 2) The abandonment of water use at "Broken Dam" for over 30 years and the inability to show Proof of Public Benefit for over 30 years. 3) Parcel #29-06-01 (area surrounding "Broken Dam") is shown to be owned by the Ruhenstroth Ranching Irrigation District in Douglas Co. Assessor's Office."

Application 46138 was timely protested by Robert Shane Murphy for Western River Guides Association on December 27, 1982, on the following grounds:

"I. The dam planned for upgrading under Serial No. 46138, by the simple fact that it impedes navigation on a court declared navigable river, should be removed. II. The dam is directly downstream from the area river-floaters end their trips; hazards to river recreationists would include the addition of electric shock to the now-existing danger of drowning beneath the dam. III. The dam, having been built in 1912 and destroyed by floods in 1937, is regarded as structurally unsound and dangerous to enterprises located immediately below it."

Both protests request denial of Application 46138.

GENERAL

After notice to all parties, a hearing was held before the State Engineer in Carson City, Nevada, on February 4, 1983, at which time the applicant, protestant Springer and protestant Murphy appeared in person. Mr. Springer was also represented by counsel.

The hearing was noticed as a hearing in the matter of Applications 45996 and 46138 and the protests thereto. Application 45996 was filed by Victor L. or Janet Buron, for use of the water of the East Fork of the Carson River for power generation purposes. At the outset of the hearing, it was determined that there were certain defects in Application 45996 which made it impossible to continue with the hearing as to Application 45996. Therefore, the hearing on the Buron application was continued until the defects could be cured. Mr. Buron had no objection and in fact asked that the hearing proceed as to Application 46138.

Protestant Murphy's testimony centered on his objection to Mineop's use of the Ruhenstroh Dam for its project, therefore, perpetuating an existing obstacle to river rafting. 1/

Protestant Springer's testimony was that he has an earlier filing for a preliminary permit with the Federal Energy Regulatory Commission (FERC) and that his proposal, which includes building a dam some 500 feet above Mineop, would not be compatible with Mineop's; that the Ruhenstroh Dam is unsafe and should be removed; a challenge to applicant Mineop's asserted ownership of the Ruhenstroh Dam; and that the right to generate power (2844) has been abandoned. 2/

Applicant Mineop's testimony included detailed exhibits relating to its proposal before FERC; written comments from involved agencies; the condition of the dam; and defense of his contention of ownership of the dam site. Mineop objected to testimony relating to abandonment of 2844 on the grounds that no notice was given relating to a determination of abandonment, and that there, in fact, is no abandonment. 3/

FINDINGS OF FACT

I

The Ruhenstroh Dam was built in 1912 and has been in place since that time. Ever since organized rafting has been allowed on the river, under the auspices of the appropriate Federal agencies, the rafts have been taken out of the river upstream from the dam. The instant application will have no effect on present rafting.

II

Neither Mineop nor Springer had actually received any authorization from the Federal Government to proceed with their respective proposed projects at the time of the hearing.

Mineop's water application is prior in time and under Nevada law must be decided before action can be taken on other applications on the same source.

III

There is no competent evidence relating to the structural condition of the Ruhestroh Dam that shows that it is unsound. The technical evidence is to the contrary. It appears that the debris left over from the lowering of the dam is the problem. Mineop proposes to clear this debris and provide security. To remove the dam would release a great amount of gravel downstream to the detriment of the public and private facilities situated below the dam site. No evidence was given to show that proposed improvements, if needed, cannot be accomplished.

IV

The instant hearing was for the purpose of determining whether or not Application No. 46138 should be granted. The status of Permit No. 2844 is not at issue in this proceeding.

V

Protestant Springer's challenge to title to the dam site is not based on title in Springer, but in the United States. Mineop contends its title is to the dam and the right to maintain the dam. There is substantial evidence on the record that many agencies of the United States are aware of Mineop's claim. No person representing the United States has disputed Mineop's claim. Mineop's deeds appear on their face to transfer title claimed by applicant Mineop to Mineop.

VI

Mineop's use of the water will be non-consumptive. There will be no adverse effect on any existing rights on the Carson River.

CONCLUSIONS

I

The State Engineer has jurisdiction of the parties in the subject matter of this action. 4/

II

The testimony, evidence and information available do not indicate that there will be any effect on existing water rights if Application 46138 is permitted.

III

It would be in the public interest to have the area surrounding Ruhestroh Dam cleared and secured, and to allow non-consumptive use of the water for the generation of electrical power as proposed in the instant application.

IV

Application 46138 was filed and processed to a ready for action status in accordance with the procedures set out in NRS 533.

RULING

1. Substantial evidence on the record supports a finding that the proposed use of water of the East Fork of the Carson River will be non-consumptive, will not adversely effect existing rights and will be in the public interest and welfare. 5/
2. The protests to Application 46138 are hereby overruled and a permit will be issued thereunder, subject to existing rights, upon receipt of the statutory permit fees.

Respectfully submitted,



Peter G. Morros
State Engineer

PGM/LCR/bc

Dated this 5th day of
JULY, 1983.

FOOTNOTES

1. Hearing Transcript, pages 8-15.
2. Hearing Transcript, pages 15-35; 85-88.
3. Hearing Transcript, pages 35-83.
4. NRS 533.025 and 533.030(1).
5. NRS 533.370(3).