

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 47447 )  
FILED BY WALLACE J. CAVANAUGH TO )  
CHANGE THE POINT OF DIVERSION, PLACE )  
OF USE AND MANNER OF USE OF A )  
PORTION OF PERMIT 24812, CERTIFICATE )  
9312 ISSUED FOR A SPRING IN PINE GROVE )  
CANYON, LYON COUNTY, NEVADA. )

RULING

GENERAL

Application 47447 was filed on November 22, 1983, by Wallace J. Cavanaugh to change the point of diversion, place of use and manner of use of .008 c.f.s. of water heretofore appropriated under Permit 24812, Certificate 9312, to supply water for mining, milling and domestic purposes. The point of diversion of the base right is a spring located within the SE1/4 NW1/4 Section 32, T.10N., R.26E., M.D.B.&M., and the place of use of that right is within the S1/2 NW1/4 NE1/4 Section 32, T.10N., R.26E., M.D.B.&M. The proposed point of diversion for Application 47447 is located within the SW1/4 SW1/4 Section 31, T.10N., R.26E., M.D.B.&M., and the place of use is within the SW1/4 SW1/4, SE1/4 SW1/4, and the SW1/4 SE1/4 Section 31, T.10N., R.26E., M.D.B.&M.<sup>1</sup>

A field investigation was conducted on July 10, 1984, for the purpose of gathering additional information in preparation for taking action on Application 47447 by the State Engineer.<sup>2</sup>

The proposed point of diversion was found to be a pipe line that emerges from a caved in mine adit located on the south side of Pine Grove Canyon. According to the applicant, Mr. Cavanaugh, the pipe line is approximately 200 yards long starting at the end of the tunnel where water was encountered forcing the abandonment of the tunnel. The flow from the pipe was measured at 2 gallons per minute.

The spring source for the base right, Certificate 9312, was found to be in the Canyon floor (Pine Grove), approximately a mile and a quarter downstream from the point of diversion of Application 47447.

The applicant was advised that in an application to change the point of diversion of a source, whether it was from a creek, spring or underground, the new point of diversion must be determined to be from the same source.

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<sup>1</sup> Application 47447 is a public record on file in the office of the State Engineer.

<sup>2</sup> A copy of the filed investigation, conducted on July 10, 1984, is a public record filed with Application 47447 on file in the office of the State Engineer.

On August 20, 1984, a certified letter was received from Wallace J. Cavanaugh requesting this office to continue processing Application 47447 as submitted.<sup>3</sup> He recalled that during a discussion of the base right with this office, the water course (source) of the spring was an underground aquifer which flowed down from Pine Grove Canyon and a tributary known as Coal Canyon. He stated the word "spring" was misused in describing the area of Pine Grove since all of the "springs that have been issued permits in Pine Grove are man made excavations with the underground aquifer either by mine adits or open pit excavations into the canyon surface".

The point of diversion of Application 47447, according to Cavanaugh, while not from a surface source, is from the underground aquifer in Coal Canyon which eventually finds its way to the source under Permit 24812.

### FINDINGS OF FACT

#### I.

The proposed point of diversion for Application 47447 is water developed from a mine adit located in the south wall of Pine Grove Canyon approximately one mile and a quarter upgrate from Pine Grove Spring, the source of Certificate 9312.<sup>2</sup>

#### II.

The field investigations disclose no springs in Coal Canyon that contribute surface water to Pine Grove Canyon.<sup>2</sup>

#### III.

In a letter dated January 23, 1977, from Wallace J. Cavanaugh to this office, the source of water for Permit 24812 is described in "Attachment 1" of that letter as follows:<sup>4</sup>

"The uppermost source of water is located near Old Pine Grove Springs. A 250 foot long trench has been cut across the old river channel to claim water from the spring area into a holding reservoir."

In reports of field investigation dated June 5, 1969; November 24, 1969; April 7, 1976; June 23, 1978; and Rulings dated June 19, 1969, and June 15, 1970, from the office of the State Engineer, the source of Permit 24812 is described as Pine Grove Springs or the "original" Pine Grove Springs.

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<sup>3</sup> A certified letter dated August 15, 1984, from Wallace J. Cavanaugh to the State Engineer is a public record filed with Application 47447 on file in the office of the State Engineer.

<sup>4</sup> A letter dated January 23, 1977, from Wallace J. Cavanaugh to Roland D. Westergard is a public record filed with Permit 24518 on file in the office of the State Engineer.

IV.

Developed water implies waters not part of natural water courses. Drainage from a mine tunnel provides a prime example. This water is subject to appropriation by any person with the intent of putting it to beneficial use. If the developed waters enter a natural stream as a result of man's activity, this water is not subject to prior appropriation by owners of senior water rights on the stream.<sup>5</sup>

No application to change the point of diversion from one source to a totally different source can be granted.<sup>6</sup>

V.

All underground waters within the boundaries of the State belong to the public and subject to all existing rights to the use thereof, are subject to appropriation for beneficial use only under the laws of this State relative to the appropriation and use of water and not otherwise.<sup>7</sup>

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.<sup>8</sup>

II.

Pine Grove Springs is a surface source of water for Permit 24812, Certificate 9312, which is the base right of Application 47447 which proposes to change the point of diversion, place of use and manner of use of a portion.

III.

There is no evidence or information available to indicate that the proposed point of diversion for Application 47447 is from the same source of water as Permit 24812 and, in fact, there are judicial grounds to consider the mine drainage proposed as the new point of diversion of Application 47447 as an entirely new source of water to Pine Grove Canyon.

IV.

No application shall be for the water of more than one source to be used for more than one purpose.<sup>6</sup>

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<sup>5</sup> Ripley v. Park Center Land and Water Co., 40 Colo. 129 90 P. 75 (1907).  
Bidleman v. Short, 38 Nev. 150 Pac. 834 (1915).

<sup>6</sup> NRS 533.330.

<sup>7</sup> NRS 534.020.

<sup>8</sup> NRS 533.325.

V.

All surface waters and underground waters within the State of Nevada are subject to appropriation under the State laws relating to appropriation.<sup>9</sup>

**RULING**

Application 47447 is hereby denied on the grounds that the source of water proposed at the new point of diversion is from a different source than Permit 24812, Certificate 9312.

Respectfully submitted



Peter G. Morros  
State Engineer

PGM/GC/bl

Dated this 20th day of

SEPTEMBER, 1984.

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<sup>9</sup> NRS 533.025, 533.030, 534.020 and 534.180.