

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 43314)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF MILLER TUNNEL WITHIN)
WALKER LAKE VALLEY IN MINERAL)
COUNTY, NEVADA.)

RULING

GENERAL

Application 43314 was filed on March 11, 1981 by Mt. Hope Mines Inc. to appropriate 0.5 c.f.s. of water from Miller Tunnel (aka Lucky Boy Mine) for mining, milling and domestic purposes within a portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17, T.7N., R.30E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17, T.7N., R.30E., M.D.B.&M.¹

Application 43314 was timely protested by Millard D. Mitchell and Carol Mitchell on the following grounds: (in part)²

1. On or about June 6, 1979, the State Engineer's office ruled that there is no unappropriated water available for appropriation pertaining to the same source (Miller Tunnel).
2. Mitchells' permitted right no. 29636 is of record, current and valid.
3. Applicant for Permit No. 43314 must provide sufficient proof of water of the same quality and quantity to meet the needs of all parties. President of Mt. Hope Mining Corporation, Harold Drummer has indicated there is no water available on top of the Mitchells' permitted rights and that Miller Tunnel water is diminishing.
4. Readings taken by Mt. Hope Mining Corporation (Mt. Hope Mines Inc.) personnel substantiate that between 6 and 7 gallons of water per minute are delivered from the mine source. The Mitchell application reflects a daily right to withdraw 210,000 gallons per day, while only a maximum of 10,800 gallons per day is made available.

The protestant requests Application 43314 be denied in all aspects.

¹ Public record in the office of the State Engineer.

² A copy of the protest dated December 17, 1984 is a public record filed with Application 43314 in the office of the State Engineer.

An informal protest was filed by Ellen Blair concerning Application 43314 to wit:³

"Contamination of domestic water due to extremely porous ground where water applied for would run off and drain less than 500 feet directly above domestic (well). As a matter of fact and record, said water pumped out of Miller Tunnel drains into my dam therefore am requesting field investigation for clarification and visible proof by your office."

A formal field investigation was conducted on November 30, 1984 to attempt to resolve protests and to gather additional information for the State Engineer.⁴

Although the points of diversion for both the Mitchell permit (29636) and for Application 43314 are given as the entrance to the tunnel, the actual point of diversion for 29636 was found to be 2,000 feet inside the tunnel and representatives for the applicant of 43314 indicated they wished to divert their water still further inside the tunnel in a manner that would not interfere with the existing right.

An inspection revealed that Mitchells' source of water was a sump from which a plastic pipe conveyed the water by gravity to the entrance of the passage. A measurement of the water in the pipe showed a maximum of 6 gallons per minute.

From the sump, the tunnel was extended to the right for about 4,000 feet to where a recent cave-in had taken place.

A small stream observed coming from the cave in which flowed toward the sump was estimated to be flowing 4 or 5 gallons a minute.

The mine foreman indicated he thought there were two sources of water in the tunnel; one providing a direct source for the sump; however, the second source from the end of the tunnel may also contribute to the supply.

FINDINGS OF FACTS

I.

The actual proposed point of diversion for Application 43314 is water from an unspecified point within Miller Tunnel beyond a pump located approximately 2,000 feet in the tunnel that serves as the point of diversion for Permit 29636.

³ A copy of the protest dated December 28, 1981 is a public record filed with Application 43314 in the office of the State Engineer.

⁴ A copy of the field investigation conducted on November 30, 1984 is a public record filed with Application 43314 on file in the office of the State Engineer.

II.

In Millard D. Mitchell and Maxine Carol Mitchell vs. Mt. Hope Mining Corporation et al, it was determined that under Permit 29636 the Mitchells have a right to domestic water only from Miller Tunnel.⁵ A certificate of appropriation of water was issued to Millard D. and Carol Mitchell for 0.023 c.f.s. but not to exceed 0.657 million gallons annually.

III.

On November 30, 1984, the pipeline from the source of water for Permit 29636 was measured at 6 gallons of water per minute. A small stream of water tributary to the pump serving as the source of water for Permit 29636 was estimated to be running at 4 to 5 gallons per minute.

IV.

Application 36116 filed by Ellen Blair on October 27, 1978, to divert 4.0 c.f.s. of water from Miller Tunnel for irrigation and domestic purposes was denied by the State Engineer on June 6, 1979, on the grounds there is no water available for appropriation and that the granting of Application 36116 would impair the value of existing rights and would be detrimental to the public interest and welfare.⁶

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.⁷

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁸

- A. There is no appropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public interest.

⁵ Millard D. Mitchell and Maxine Carol Mitchell vs. Mt. Hope Mining Corporation et al Case No. 5679, Fifth Judicial District State of Nevada, 1982.

⁶ Nevada State Engineer's Ruling No. 2473, June 6, 1979.

⁷ NRS 533.325.

⁸ NRS 533.370 (3).

III.

The source of water described in Application 43314 and observed during the aforementioned field investigation on November 30, 1984 is a significant tributary to the sump which serves as the source of water for Permit 29636, Certificate 10448. A diversion of the upstream flow as the proposed source of Application 43314 would interfere with the existing certificated right.

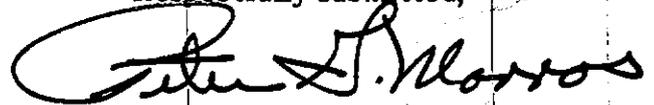
IV.

Measurements and observations of the existing water flows in Miller Tunnel at the time of the field investigation did not indicate there are additional unappropriated waters available.

RULING

Application 43314 is hereby denied on the grounds that approval of said application would adversely affect existing rights.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/GC/11

Dated this 22nd day of

February, 1985.