

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 35706)
AND 35707 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF CHERRY CREEK)
SPRING NO. 1 AND CHERRY CREEK SPRING)
NO. 2 IN STEPTOE VALLEY, WHITE PINE)
COUNTY, NEVADA.)

RULING

GENERAL

Application 35706 was filed on August 7, 1978, by Robert Rude to appropriate 0.5 c.f.s. of water from Cherry Creek Spring No. 2 for mining, milling and domestic purposes within the E1/2 SE1/4 Section 36, T.24N., R.62E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SE1/4 Section 36, T.24N., R.62E., M.D.B.&M.¹

Application 35707 was filed on August 7, 1978, by Robert Rude to appropriate 0.5 c.f.s. of water from Cherry Creek Spring No. 1 for mining, milling and domestic purposes within the E1/2 SE1/4 Section 36, T.24N., R.62E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NW1/4 Section 36, T.24N., R.62E., M.D.B.&M.¹

Applications 35706 and 35707 were timely protested on February 7, 1979, by Clifford Herman on the grounds that the granting of the applications would interfere and conflict with prior rights.¹

FINDINGS OF FACT

I.

The protestant has concrete collection boxes and pipelines to a mill site and for a domestic use by a Mr. Harris above the mill site, all on lands owned by the protestant. Any excess water stays in Cherry Creek which is used by the protestant to irrigate 10 to 20 acres at the mouth of the canyon.²

II.

The protestant has rights to various springs tributary to Cherry Creek which include the springs listed as the source of Applications 35706 and 35707 as evidenced in Permits 35669, 35670, 35671, 36204, 36205 and 36206 as well as some undetermined claims of vested rights for irrigation out of Cherry Creek.^{1, 2}

¹ Public record in the office of the State Engineer.

² Report of field investigation conducted by Victor R. Hill and Mike Buschelman of the Division of Water Resources on June 12, 1979, a copy of which is filed under Application 35706.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.³

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁴

- A. There is no unappropriated 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.

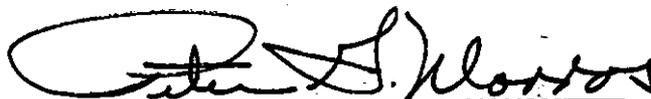
III.

Based on the evidence and information available to the State Engineer, the granting of Applications 35706 and 35707 would conflict with and impair existing rights.

RULING

The protest to the granting of Applications 35706 and 35707 is hereby upheld and said applications are hereby denied on the grounds that the granting thereof would conflict with and impair existing rights.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/MT/bl

Dated this 13th day of
June, 1985.

³ NRS 533.025 and NRS 533.030(1).

⁴ NRS 533.370(3).