

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 49399)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE IN)
SMITH VALLEY, LYON COUNTY, NEVADA.)

RULING

GENERAL

I.

Application 49399 was filed on September 17, 1985, by N. S. Schwartz to appropriate 1.0 c.f.s. of water from an underground source for mining purposes within the S1/2 NE1/4 SW1/4, S1/2 NW1/4 SE1/4, S1/2 SW1/4, SW1/4 SE1/4 Section 8; N1/2, SE1/4, N1/2 SW1/4 Section 17; and S1/2 SW1/4 Section 16, all in T.13N., R.24E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SE1/4 Section 8, T.13N., R.24E., M.D.B.&M.¹

II.

Application 49399 was protested on December 13, 1985, by John P. Bielaski on the following grounds:¹

"Request conflicts with existing water rights, whereas, SW1/4, SE1/4 of Section 8, T13N, R24E, is stated as place of use on an existing application currently on file."

FINDINGS OF FACT

I.

Permit 43318 was issued to John P. Bielaski on January 9, 1986, for 1.0 c.f.s. for mining purposes within the SW1/4 SE1/4 Section 8, T.13N., R.24E., M.D.B.&M. The point of diversion was described as being within the NW1/4 NE1/4 Section 20, T.13N., R.24E., M.D.B.&M.¹

In considering the merits of Application 43318 which had been protested, a public administrative hearing was held before the State Engineer on March 1, 1985. The hearing record reflects conflicting testimony concerning the ownership and title of the unpatented mining claims within the place of use of Application 43318.²

¹ Public record in the office of the State Engineer.

² See transcript of public hearing held March 1, 1985, and State Engineer's Ruling 3218 dated July 22, 1985 public record in the office of the State Engineer.

II.

In a letter dated January 24, 1986, the attorney representing the applicant under Application 49399 presented evidence that N. S. Schwartz is the owner of the unpatented mining claim within his described place of use.¹

III.

The location of the protestant's well is over a mile from the proposed point of diversion under Application 49399.¹

CONCLUSIONS

I.

The State Engineer³ has jurisdiction of the parties and the subject matter of this action and determination.

II.

In the State Engineer's judgment, the point of diversion proposed under Application 49399 is at a sufficient distance from existing rights to preclude any conflict or interference with prior rights.

III.

The applicant has demonstrated that he has access to the area described under the point of diversion and place of use and intends to place the water to beneficial use.

RULING

The protest to Application 49399 is herewith overruled on the grounds that the proposed use will not conflict with existing rights or otherwise prove detrimental to the public welfare. Application 49399 will be granted upon payment of the required statutory permit fees.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/CT/bl

Dated this 13th day of
February, 1986.

³ NRS Chapters 533 and 534.