

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 47009)  
FILED TO APPROPRIATE THE PUBLIC)  
WATERS OF WILLOW CREEK IN THE IMLAY)  
AREA, PERSHING COUNTY, NEVADA. )

RULING

GENERAL

I.

Application 47009 was filed on June 13, 1983, by Karl Segerstrom and Ben Johnson to appropriate 0.50 c.f.s. of water from Willow Creek for mining and milling purposes within the SE1/4 SE1/4 Section 2, T.31N., R.36E., M.D.B.&M. The point of diversion is described as being within the SE1/4 SE1/4 Section 2, T.31N., R.36E., M.D.B.&M.<sup>1</sup>

II.

Application 47009 was timely protested on August 24, 1983, by Eugene D. Thacker, et al., on the following grounds:<sup>1</sup>

"This creek has been dry during the summer months for many years. This year, 1983, has, as everyone knows, been exceptionally wet. The Thacker property is leased to Golden Age Minerals of Salt Lake City, Utah, and water rights, App. #13305, Record #4461, Book 13 Page 4461 are being used. I feel a legal document for extra water would be very detrimental to all concerned."

Application 47009 was timely protested on September 26, 1983, by Star Sheep Company by Robert Belzarena on the following grounds:<sup>1</sup>

"That the Protestant for many years last past has used the waters at Willow Creek for stock water and has a vested interest in the use of the waters of Willow Creek for stock water, which would be adversely affected if the application of Karl Segerstrom & Ben Johnson is granted."

III.

After due and proper notice to all parties, a public administrative hearing before the State Engineer was held on March 27, 1986, in Winnemucca, Nevada.<sup>2</sup> The protestants and applicant appeared in person and by counsel and evidentiary presentations were introduced into the record in support of and in opposition to Application 47009.

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<sup>1</sup> See transcript of public administrative hearing, public record in the office of the State Engineer.

<sup>2</sup> NRS 533.365.

FINDINGS OF FACT

I.

Protestants established, through an expert witness, that the mining operation proposed under Application 47009 could not be operated on a nonconsumptive use basis and would further result in the pollution of the down stream waters of the source. The protestants established that the applicant's proposed use of the water would result in a detrimental effect on the water quality of the source as relates to the protestants' irrigation and stockwatering use under prior and existing rights.<sup>3</sup>

II.

Protestants' witness, testifying on behalf of Thacker's claim of vested right (Proof of Appropriation No. 04554)<sup>4</sup> for irrigation of the lands below the subject application and Star's use of Willow Creek for stockwatering, stated that he is a descendant of the Thacker family that took up the Proof No. 04554 land in the 1870's, that when water was available, the land is irrigated for hay and pasture, that both Thacker and Star stock have watered from the creek since the 1870's, and that such use has continued to date.<sup>5</sup> On cross examination, protestants' witness testified that Willow Creek is often dry in the summer and that, in his opinion, there is not enough water to satisfy existing rights and vested claims.<sup>6</sup>

Thacker incorporated by reference Permit 13305, Certificate 4461, in the name of Annie Thacker for 2.0 c.f.s. of water of Willow Creek for mining purposes.<sup>7</sup> Thacker's witness stated that this right had been used mostly by leasees on and off since the right was acquired.<sup>8</sup>

III.

The applicant testified that, in his opinion, mining use has historically taken precedence over other uses in Willow Creek Canyon and that his proposed operation, including a settling pond, will be nonconsumptive and will not have any effect on the quality or quantity of water in Willow Creek.<sup>9</sup>

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<sup>3</sup> Transcript of public administrative hearing, March 27, 1986, pp. 31-35, 47-51.

<sup>4</sup> Thacker Exhibit No. 2, public administrative hearing, March 27, 1986; Proof of Appropriation No. 04554, public record in the office of the State Engineer.

<sup>5</sup> Transcript of public administrative hearing, March 27, 1986, pp. 21-22, 25-31, 35-39.

<sup>6</sup> Transcript of public administrative hearing, March 27, 1986; pp. 40-47. Applicants' expert witness testified that the announcement of discovery in Willow Creek was in the 1860's, that there is no right-of-way of record for the pipeline described in Certificate 4461, and that he had measured 0.5091 c.f.s. of water in Willow Creek near the proposed point of diversion under Application 47009 on March 26, 1986. Transcript of public administrative hearing, March 27, 1986, pp. 53-58; Applicants' Exhibit No. 1.

<sup>7</sup> Public record in the office of the State Engineer under Permit 13305.

<sup>8</sup> Transcript of public administrative hearing, March 27, 1986, pp. 22-23, 40-43.

<sup>9</sup> Transcript of public administrative hearing, March 27, 1986, pp. 63-69.

IV.

The record of testimony also establishes that the applicant has diverted water from Willow Creek and altered the channel with exploration and development work.<sup>10</sup>

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.<sup>11</sup>

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:<sup>12</sup>

- 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.

The record of evidence establishes the protestants' permitted and claims of vested rights for use of the waters of Willow Creek.

IV.

The preponderance of expert testimony on the record does not demonstrate or support the applicants' claim that the proposed use will be totally nonconsumptive.

V.

The un rebutted evidence on record indicates there is not sufficient water in Willow Creek (except exceptionally high runoff) to satisfy existing rights.

VI.

Applicant has been diverting water without benefit of a permit as required by Nevada law and, accordingly, must cease such activity now and in the future.

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<sup>10</sup> Transcript of public administrative hearing, March 27, 1986, pp. 10-13.

<sup>11</sup> NRS 533.325.

<sup>12</sup> NRS 533.370(3).

RULING

The protests to Application 47009 are hereby upheld and said application is hereby denied on the grounds that the proposed use has not been shown to be nonconsumptive and that the record in this proceeding does not demonstrate that there is unappropriated water in the proposed source and does indicate that granting the proposed application would conflict with existing rights.

It is further ruled that Applicants Segerstrom and Johnson and each of them and any person or persons acting on behalf of or as agent or in any way for said applicants, cease immediately and henceforth from any diversion of or disturbance of the waters of Willow Creek, and further that said applicants forthwith cause the waters of Willow Creek to be returned as nearly as possible to their natural and undisturbed condition.

Respectfully submitted,



PETER G. MORROS  
State Engineer

PGM/LCR/bl

Dated this 4th day of  
June, 1986.