

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 49406,
49407 AND 49408 FILED TO APPROPRIATE)
THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE IN THE PALMETTO)
DRAINAGE, FISH LAKE VALLEY,
ESMERALDA COUNTY, NEVADA.)

RULING

GENERAL

Application 49406 was filed on September 23, 1985, by Connie's Midway Mines to appropriate 1.0 c.f.s. of water from an underground source for mining, milling and domestic purposes within Section 21, T.6S., R.39E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SE1/4 Section 21, T.6S., R.39E., M.D.B.&M.¹

Application 49407 was filed on September 23, 1985, by Connie's Midway Mines to appropriate 1.0 c.f.s. of water from an underground source for mining, milling and domestic purposes within Sections 27 and 28, T.6S., R.39E., M.D.B.&M. The point of diversion is described as being within the NE1/4 SE1/4 Section 28, T.6S., R.39E., M.D.B.&M.¹

Application 49408 was filed on September 23, 1985, by Connie's Midway Mines to appropriate 1.0 c.f.s. of water from an underground source for mining, milling and domestic purposes within Sections 34 and 35, T.6S., R.39E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NW1/4 Section 35, T.6S., R.39E., M.D.B.&M.¹

Applications 49406, 49407 and 49408 were timely protested by Jack N. Vogt on the following grounds:¹

"Any water activity in this area would jeopardize my existing water rights."

The protestant requests the above referenced applications be denied.

After proper notice, a formal field investigation was held on September 25, 1986, to attempt to resolve the protest and to gather additional information for the State Engineer.¹

The underground points of diversion for the applications in issue were located in tributary canyons with intermittent streams that rise and sink along the canyon corridors as they flow down gradient to Palmetto Wash.

¹ Public record in the office of the State Engineer.

The applicants indicated they thought they were filing for surface water which they would obtain from "open sumps" to be used in their placer operations. They were advised that to seek water from an underground source within a quarter mile of a stream required a drilled well with a sealed casing to 100 foot depth to protect the stream system and its appropriators.

A review of the office records revealed there were no filings of any wells in the area.

In the absence of the protestant, the applicants were made aware that Mr. Vogt, through his attorney, had filed Chapter 11 Bankruptcy and had requested that any administrative action that would be prejudicial to the debtors be deferred.

FINDINGS OF FACT

I.

The following claims of vested rights and appropriations of record are within the stream system and its tributaries covering the area of the points of diversion of the subject applications.¹

- 1) Proof 01599 was filed on December 11, 1918 by C. W. Benton claiming a vested right for 0.1 c.f.s. from Big Log Springs for irrigation purposes.
- 2) Proof 04468 was filed on June 27, 1985, by Jack and Joan Vogt claiming a vested right for 0.02 c.f.s. from Canyon Spring for stockwatering purposes.
- 3) Proof 04469 was filed on June 27, 1985, by Jack and Joan Vogt claiming a vested right for 0.02 c.f.s. from Little Log Spring to be used for stockwatering purposes.
- 4) Proof 04470 was filed on June 27, 1985, by Jack and Joan Vogt claiming a vested right for 0.02 c.f.s. from Cabin Spring to be used for stockwatering purposes.
- 5) Proof 04481 was filed on July 29, 1985, by Jack and Joan Vogt claiming a vested right for 0.025 c.f.s. from Walker Spring to be used for stockwatering purposes.
- 6) Permit 4911, Certificate 471, was filed on February 18, 1918, by O. C. Houghton and issued for 0.0125 c.f.s. of water from Cottonwood Creek for stockwatering purposes.
- 7) Permit 4914, Certificate 472, was filed on February 18, 1918, by O. C. Houghton and issued for 0.04 c.f.s. of water from Hines or Meadow Spring to be used for stockwatering and irrigation purposes.
- 8) Permit 4915, Certificate 473, was filed on February 18, 1918, by O. C. Houghton and issued for 0.025 c.f.s. of water from Hines Spring #2 to be used for stockwatering purposes.
- 9) Permit 4916, Certificate 543, was filed on February 18, 1918, by O. C. Houghton and issued for 0.003 c.f.s. of water from Houghton Spring to be used for stockwatering purposes.

- 10) Permit 5178, Certificate 543, was filed on July 29, 1918, by O. C. Houghton and issued for 0.015 c.f.s. of water to be used for stockwatering purposes.
- 11) Permit 14403, Certificate 4375, was filed on July 7, 1952, by Roy L. Wilbur and issued for 0.10 c.f.s. of water from a spring to be used for mining and domestic purposes.
- 12) Permit 25286, Certificate 8699, was filed on September 19, 1969, by Lida Livestock Co. and issued for 0.0022 c.f.s. of water from Wire Spring to be used for stockwatering purposes.
- 13) Permit 28837, Certificate 8703, was filed on October 29, 1974, by Henry Howeson and issued for 0.003 c.f.s. of water from Stockade Spring "A" to be used for stockwatering purposes.
- 14) Permit 28838, Certificate 8704, was filed on October 29, 1974, by Henry Howeson and issued for 0.0012 c.f.s. of water from Stockade Spring "B" to be used for stockwatering purposes.
- 15) Permit 28910, Certificate 10598, was filed on November 14, 1974, by Mark S. Ferrier and issued for 0.0167 c.f.s. of water from Log Springs to be used for milling and domestic purposes.

II.

A search of the records in the State Engineer's office and subsequent field investigation disclosed no wells or underground appropriations exist in the Palmetto Wash area and its tributaries.¹

III.

Results of the field investigation and review of subject applications reveal the applicants filed for water from underground sources while intending to appropriate water from excavations in the stream system.¹

IV.

Underground source appropriations that are approved within a quarter of a mile of a stream require a well with no perforations in the production casing from ground level to 100 feet.²

V.

No applications shall be for the water of more than one source to be used for more than one purpose.³

² Section 4.01, Regulations for Drilling Water Wells, adopted 1981, Division of Water Resources, Department of Conservation and Natural Resources, State of Nevada.

³ NRS 533.330.

VI.

All surface waters and underground waters within the State of Nevada are subject to appropriation under the State laws relating to appropriation.⁴

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.⁵

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁶

- 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 evidence and information available indicates Applications 49406, 49407 and 49408 were submitted for water from "underground" sources while the applicants intended to appropriate water from shallow excavated sumps located directly in the stream channels.

IV.

No application shall be for the water of more than one source to be used for more than one purpose.

V.

All surface waters and underground waters within the State of Nevada are subject to appropriation under the State laws relating to appropriation.⁴

VI.

Approval of Applications 49406, 49407 and 49408 would allow substantial diversion of water upstream of prior rights of record on tributary waters of Palmetto Wash and the State Engineer's concludes that approval of said applications would tend to interfere with and impair existing rights.

⁴ NRS 533.025, 533.030, 534.020 and 534.180.

⁵ NRS 533.325.

⁶ NRS 533.370(3).

RULING

Applications 49406, 49407 and 49408 are hereby denied on the grounds that the granting thereof would tend to interfere with and impair existing rights.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/GC/bl

Dated this 16th day of
October, 1987.