

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 52857)
FILED TO APPROPRIATE THE PUBLIC)
WATER FROM A SPRING SOURCE IN BIG)
SMOKEY VALLEY-TONOPAH FLAT, NYE)
COUNTY, NEVADA.)

RULING

GENERAL

I.

Application 52857 was filed on January 10, 1989, by Pete and Sheila Bertolino to appropriate .05 c.f.s. of water from a spring source for domestic and stockwatering purposes within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4, T.8N., R.42E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 5, T.8N., R.42 E., M.D.B.&M.¹

II.

The source of water sought to be appropriated is located on the edge of a meadow in Section 5, T.8N., R.42E., M.D.B.&M. and is tributary to the source of water for the Upper Peavine Ranch.²

III.

The State Engineer recognized that springs rising within the meadows are tributary and make up a portion of the total appropriation and duty of the right adjudicated.³

¹ Public record in the office of the State Engineer under Application 52857.

² In the Matter of the Determination of the Relative Rights in and to the waters of Peavine Creek and its tributaries in Nye County, Nevada. See map filed in support of Claim 02225.

³ Page 6 of the Order of Determination in the matter described in footnote 2 states that "Springs rising within the confines of the claimants holdings shall be considered tributaries of Peavine Creek stream system, and the aggregate diversions from all sources of supply shall not exceed the seasonal acre foot allotment."

IV.

Peavine Creek and its tributaries have been determined to be fully appropriated.⁴

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.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 or change conflicts with existing rights, or
- C. The proposed use or change threatens to prove detrimental to the public interest.

⁴ Page 6 of the Order of Determination in the above entitled matter states in part; "... as long as the magnitude and extent of the use of water under present appropriations remains substantially the same, the stream system is closed to subsequent appropriation of water...".

⁵ NRS Chapter 533.

⁶ NRS Chapter 533.370.

RULING

Application No. 52857 is hereby denied on the grounds that this source was determined to be tributary to Peavine Creek stream system and that Peavine Creek and its tributaries are fully appropriated. Therefore to grant approval of Application 52857 would interfere with and impair existing rights.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter G. Morros", is written over a faint circular stamp or seal.

PETER G. MORROS
State Engineer

PGM/RMT/bk

Dated this 8th day of
June, 1989.