

**IN THE OFFICE OF THE STATE ENGINEER**

IN THE MATTER OF APPLICATIONS 52929)  
AND 52930 FILED TO APPROPRIATE THE)  
PUBLIC WATERS FROM CAVANAUGH)  
SPRING AND A SPRING AREA LOCATED IN)  
THE IMLAY AREA, PERSHING COUNTY,) )  
STATE OF NEVADA. )

**RULING**

**GENERAL**

Application 52929 was filed on February 14, 1989, by Edward and Pearl Speir to appropriate 1.0 c.f.s. of water from Cavanaugh Spring for mining, milling and domestic purposes within Section 24, T.32N., R.31E., M.D.B.&M and of Sections 20 and 30, T.32N., R.32E., M.D.B.&M. The point of diversion is described as being within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  Section 24, T.32N., R.31E., M.D.B.&M.

Application 52930 was filed on February 14, 1989, by Edward and Pearl Speir to appropriate 1.0 c.f.s. of water from a spring area for mining, milling and domestic purposes within Section 24, T.32N., R.31E., M.D.B.&M. and of Sections 20 and 30, T.32N., R.31E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  Section 24, T.32N., R.31E., M.D.B.&M.

Application 52929 was timely protested by U.S.D.I. Bureau of Land Management, Winnemucca District on March 30, 1989, on the following grounds:

Cavanaugh Spring is located on public (BLM) land. The water from this spring is needed for livestock. This spring is a public water reserve. A pit reservoir dug in the stream channel above Cavanaugh Spring is intercepting groundwater that feeds Cavanaugh Spring. This is the source of application 52930. No water source would have been available at this point without the excavated pit.

Therefore the protestant requests that the application be altered to leave 3.76 GPM for livestock at the source.

FINDINGS OF FACT

I.

A field investigation was conducted on May 25, 1990, by Steve Walmsley, Hydraulic Engineer of the Division of Water Resources.<sup>1</sup>

No measurable flow was found from either spring. The amount of water at each point of diversion consisted of some slight puddling and moist soil.

II.

Access by wildlife to water from a spring or water that has seeped to the surface of the ground is required by statute.<sup>2</sup>

III.

Providing water for wildlife has been declared a beneficial use.<sup>3</sup>

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.<sup>4</sup>

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where<sup>5</sup>:

A. There is no unappropriated water at the proposed source, or

-----  
<sup>1</sup> Public record in the office of the State Engineer.

<sup>2</sup> See NRS 533.367.

<sup>3</sup> State v. State Engineer, 104 Nev. 709, 706 P. 2d 263 (1988).

<sup>4</sup> NRS Chapter 533.

<sup>5</sup> NRS 533.370.

- 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.

III.

An adequate flow does not exist at the source to support the proposed mining and milling operation.

**RULING**

Applications 52929 and 52930 are hereby denied on the grounds that it would not be in the public interest to grant a permit on sources of water where there would not be sufficient water flow to ensure the customary use by wildlife as required under NRS 533.367. No ruling is made on the protest by the U.S.D.I. Bureau of Land Management.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/SW/bk

Dated this 4th day of  
June, 1990.