

IN THE OFFICE OF THE STATE ENGINEER  
OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION )  
45470 FILED TO CHANGE THE POINT )  
OF DIVERSION OF THE PUBLIC WATERS )  
OF A SURFACE SOURCE PREVIOUSLY )  
APPROPRIATED UNDER PERMIT 10606, )  
CERTIFICATE 2914, WITHIN THE )  
MONITOR VALLEY - SOUTHERN PART )  
HYDROGRAPHIC BASIN (140B), NYE )  
COUNTY, NEVADA. )

RULING  
**# 5694**

GENERAL

I.

Application 45470 was filed on March 26, 1982, by United States of America - Forest Service (USFS) to change the point of diversion of 0.001 cubic feet per second (cfs) of water, heretofore appropriated under Permit 10606, Certificate 2914, from Meadow Spring to Q Spring. The proposed point of diversion is located within the NE¼ NE¼ of Section 20, T.10N., R.45E., M.D.B.&M.<sup>1</sup> The existing point of diversion is located within the NE¼ SW¼ of Section 21, T.10N., R.45E., M.D.B.&M.<sup>2</sup> The manner and place of use, which are unchanged, are for domestic purposes within the NE¼ SW¼ of Section 21, T.10N., R.45E., M.D.B.&M.

II.

The USFS, under Item 15 of Application 45470, refers to an attached sheet of comments where the USFS states that, "The certificated spring source has consistently failed to pass safe drinking water tests and the spring site is situated such that protection from surface contamination is difficult."<sup>1</sup>

---

<sup>1</sup> File No. 45470, official records in the Office of the State Engineer.

<sup>2</sup> File No. 10606, official records in the Office of the State Engineer.

**III.**

Application 45470 was timely protested by E. Wayne Hage on the following grounds:<sup>1</sup>

The applicant, namely, the United States Forest Service, is not applying on the same water source, namely, "Q Spring," but on a spring known to myself as "McAfee Spring," some one-half mile northwest and higher in elevation. I, E. WAYNE HAGE, further state that, as holder of Proof No. 01091 for the waters of Meadow Canyon Creek, I claim the right to this spring as it is tributary to Meadow Canyon Creek. Also, inasmuch as Monitor Valley waters are now in the process of being adjudicated, this protestee [sic] would request that this application be denied.

**IV.**

Application 45470 was timely protested by E. Wayne and Jean N. Hage on the following grounds:<sup>1</sup>

E. Wayne Hage and Jean N. Hage claim all of the waters of Meadow Creek under vested rights for irrigation, stock watering, and domestic purposes. Q Spring is a direct tributary of Meadow Creek. Meadow Spring (also referred to as Unnamed Spring in Certificate 2914) is a direct tributary of Meadow Creek. Meadow Creek and all its tributaries have been fully appropriated by E. Wayne Hage and Jean N. Hage under Proof of Appropriation number 01091, with date of priority 1868. The change in point of diversion will affect the vested right of E. Wayne Hage and Jean N. Hage, and will affect the total volume of flow entering Meadow Creek. This stream system has been fully appropriated since 1868. Any subsequent rights granted would adversely affect the protestants.

**FINDINGS OF FACT**

**I.**

The protests to Application 45470 are based in part upon the contention that its approval would conflict with existing water rights that appropriate water from Meadow Canyon Creek. The water rights for Meadow Canyon Creek and its tributaries were determined

by decree on June 25, 2003,<sup>3</sup> and a review by the State Engineer finds that:

- a. Q Spring is also known as MacAfee Spring;
- b. E. Wayne and Jean N. Hage have 555.66 acre-feet annually (afa), (4.85 cfs) of water on Meadow Canyon Creek and tributaries under vested right V-01091 and Permit 2244, Certificate 436;
- c. the Forest Service has 1.15 afa (0.141 cfs) combined duty for springs in the Meadow Spring Drainage, tributary to the Meadow Canyon Creek, under Reserved Rights R-01476 and R-01478, and Permit 10606, Certificate 2914.
- d. the domestic use portion of the Forest Service rights total 0.6756 afa (0.004 cfs) as follows:
  1. R-04176 (Meadow Spg)- 0.0026 afa, 0.002 cfs
  2. R-04178 (Q Spg)- 0.123 afa, 0.001 cfs
  3. Permit 10606(Unnamed Spg)- 0.55 afa, 0.001 cfs

## II.

The spring source for Permit 10606, Certificate 2914 is identified as an Unnamed Spring, but construction of the tie bearings and distances onto the United States Geological Survey (USGS) Jefferson 7.5 Minute topographic map indicates that the Unnamed Spring has the same physical location as Meadow Spring under Reserved Right R-04176. In addition, the Southern Monitor Valley Decree indicates that Meadow Spring, under Reserved Right R-04176, is also known as House Spring or Unnamed Spring.<sup>4</sup> The State Engineer finds that the Unnamed Spring of Permit 10606, Certificate 2914 is also known as Meadow Spring.

## III.

The determination of whether changing the point of diversion from Meadow Spring to Q Spring may affect the total volume of flow

---

<sup>3</sup> Decree, In the Matter of the Determination of the Relative Rights in and to Waters of Monitor Valley Southern Part (140-B), Case No. CV 14906, June 25, 2003, Fifth Judicial District Court of the State of Nevada in and for the County of Nye.

<sup>4</sup> File No. V-01091, official records in the Office of the State Engineer.

entering Meadow Canyon Creek was made utilizing the USGS Jefferson 7.5 Minute topographic map. The State Engineer finds that both Meadow Spring and Q Spring are in the same drainage tributary to Meadow Canyon Creek and, since Permit 10606, Certificate 2914 is already diverting 0.001 cfs from the flow, changing the point of diversion will not affect the total volume of flow entering Meadow Canyon Creek from this drainage.

IV.

The Forest Service indicates the reasons for making Application 45470 are that the waters from Meadow Spring do not pass drinking water standards and the protection from surface contamination is too difficult. The State Engineer finds that Meadow Spring is unsuitable for human consumption under a domestic use water right.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>5</sup>

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:<sup>6</sup>

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that the Forest Service has domestic water rights on both Meadow Spring and Q Spring that are

---

<sup>5</sup> NRS chapter 533.

<sup>6</sup> NRS § 533.370(5).

recognized in the Monitor Valley - Southern Part Decree and that Permit 10606, Certificate 2914 is subject to all prior rights.

IV.

The State Engineer concludes that the Unnamed Spring of Permit 10606, Certificate 2914 is also known as Meadow Spring.

V.

The State Engineer concludes that changing the point of diversion of Permit 10606, Certificate 2914 will not affect the total volume of flow entering Meadow Canyon Creek from the Meadow Spring and Q Spring drainage.

VI.

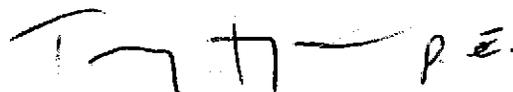
The State Engineer concludes that Meadow Spring is only suitable for stockwatering and watershed protection uses, and that by making Application 45470 the Forest Service is willfully abandoning the domestic water use right to Meadow Spring under the Reserved Right R-04176.

RULING

The protests to Application 45470 are hereby overruled and Application 45470 is approved subject to:

1. the termination of all domestic diversion and the removal of all associated diversion structures from Meadow Spring by the United States Forest Service;
2. existing water rights;
3. the payment of the statutory permit fee.

Respectfully submitted,



TRACY TAYLOR, P.E.  
State Engineer

TT/WHR/jm

Dated this 11th day of  
December 2006.