

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

IN THE MATTER OF APPLICATION 81977)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF STAR CREEK (AKA STAR)
CANYON CREEK) WITHIN THE BUENA)
VISTA VALLEY HYDROGRAPHIC BASIN)
(129), PERSHING COUNTY, NEVADA.)

RULING
#6223

GENERAL

I.

Application 81977 was filed on June 21, 2012, by the Robert W. Pruitt and Greta G. Pruitt Revocable Trust to appropriate 2.25 cubic feet per second (cfs), not to exceed 728 acre-feet annually, of water from Star Canyon Creek. The proposed manner and place of use is for the irrigation of 224 acres of land described as being located within portions of the W½ of Section 27, SE¼, E½ SW¼ of Section 28, and the N½ NE¼ of Section 33, all within T.31N., R.35E., M.D.B.&M. The proposed point of diversion is the Star Creek Ranch's concrete diversion structure on Star Canyon Creek, which is described as being located within the NW¼ NE¼ of Section 24, T.31N., R.34E., M.D.B.&M.¹

II.

Application 81977 was timely protested by Meck-Tec, Inc on the following grounds:¹

1. Pruitt's [sic] have been illegally using more water than their current existing water rights.
2. Water from Star Creek originates from my patented land.
3. Meck-Tek, Inc owns 360 patented acres (Queen of Sheba Mine, DeSoto Mine and Silver Reef), 300 unpatented acres and no water rights.
4. Meck-Tek, Inc can not [sic] commence silver mining without water rights.

FINDINGS OF FACT

I.

Nevada Revised Statute 533.365(4) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to a water right application. The State Engineer finds that in the case of Application 81977 there is

¹ File No. 81977, official records in the Office of the State Engineer.

sufficient information contained within the records of the Office of the State Engineer to gain a full understanding of the issues and a hearing in this matter is not required.

II.

Prior to the filing of Application 81977, the Nevada Division of Water Resources had, through its annual Buena Vista Valley pumpage inventory, determined that the irrigated acreage on the Star Creek Ranch greatly exceeds the amount allowed under its existing groundwater and surface water rights. By letter dated November 10, 2010,² the Office of the State Engineer advised Greta Pruitt (Star Creek Ranch) that irrigation that was taking place within the SE¼ of Section 28, T.31N., R.35 E. was being done without the benefit of a water right.³

The letter addressed similar illegal irrigation on the Santa Clara Ranch indicating that it was irrigating more land within Sections 15 and 16, T.31N., R.35 E., M.D.B.&M. than it was entitled to under its existing water rights. The letter mistakenly informed Greta Pruitt that the Star Creek Ranch is the owner of a decreed water right from Star Canyon Creek, which is further addressed below. The State Engineer informed Greta Pruitt that irrigation outside of the authorized places of use could not continue unless additional water rights were transferred onto the areas that were being irrigated without the benefit of a water right. After receiving no response, on April 5, 2011, the Office of the State Engineer sent a second letter to Greta Pruitt and the Robert W. Pruitt and Greta G. Pruitt Revocable Living Trust. They were again informed that irrigation of areas outside of the authorized places of use and without the benefit of a water right must stop prior to the 2011 irrigation season. However, the Office of the State Engineer also advised the ranch owner that it had the option of securing additional water from within the Buena Vista groundwater basin and transferring it through the statutory permitting process onto the non-watered areas. The Office of the State Engineer provided the Pruitts sixty days to initiate the proper corrective action with the understanding that the failure to comply within a timely manner would prompt the State Engineer's office to take the additional corrective action.

On June 6, 2012, John Milton, acting as agent for the Star Creek Ranch telephoned the Office of the State Engineer to discuss the irrigation of non-watered lands on the Star Creek Ranch. The State Engineer was informed that any irrigation from the southern pivot, which does not have a water right, either surface or groundwater, was using surface water from Star Canyon Creek and

² File No. V-01177, official records in the Office of the State Engineer.

³ The letter indicates that the Pruitts on Star Creek Ranch also hold permitted and certificated groundwater rights. *See*, Permits 23425, 79700 and 79701.

that no groundwater had been used in the pivot since the 2011 irrigation season. Mr. Milton indicated he would provide the State Engineer with a letter detailing the discussion, that he would be filing new change applications to correct the place of use and that the Star Creek Ranch was trying to secure additional groundwater rights in Buena Vista Valley. Mr. Milton's letter dated June 7, 2012, indicated that the Pruitts (Star Creek Ranch) had not used any groundwater in the southern pivot since June 1, 2011, but that some water may have been used in the pivot during the 2011 irrigation season. The letter further indicated regarding the Santa Clara Ranch that Mrs. Pruitt had authorized the filing of an application to appropriate surface water from Santa Clara and Tehama Creeks in order to take care of the irrigation taking place on that ranch without the benefit of a water right.

Occasional field observations made during the 2012 irrigation season indicated that the land under the non-water right southern pivot on the Star Creek Ranch was not being irrigated. The State Engineer finds that Pruitt Revocable Trust intends to acquire through the approval of Application 81977 additional water from Star Canyon Creek to expand its place of use to cover the areas that were previously irrigated without a water right.

III.

Protestant Meck-Teck, Inc. contends that the water from Star Canyon Creek originates, in part, from its 360 acres of patented land including the historic Queen of Sheba, DeSoto and Silver Reef Mines, but that 300 acres of unpatented mining claims has no water rights and that without water rights it cannot commence silver mining. The State Engineer finds that Nevada water law is based on the doctrine of prior appropriation; this means that the first in time water right applicant has a better claim to the water than those who file applications later in time - or not at all. The fact that some tributary water may originate on the Protestants' land is not relevant as land ownership does not equate to water ownership in Nevada. The fact that other unpatented mining claims do not have appurtenant water rights is also not relevant. Nevada Revised Statutes §§ 533.025 and 533.030 provide that the water of all sources within the boundaries of the state whether above or beneath the surface of the ground, belongs to the public, is subject to existing rights and may be appropriated for beneficial use if the other requirements of the water law are met. Nevada is the most arid state and many times, there is insufficient water from a specific source for all those who want to use it.

IV.

Parties using or wanting to use Star Creek, a.k.a. Star Canyon Creek, water have been competing over the right to use this water for many years. On April 2, 1924, G. Gallio filed a verified complaint against Edith Ryan in the Sixth Judicial Court of the State of Nevada, in and for the County of Pershing, regarding the appropriation of water from Star Canyon Creek. In his complaint, Gallio alleged that Edith Ryan's Proof of Appropriation V-01177 had never been formerly adjudicated and that Ryan's irrigation practices had caused him irreparable damage. To determine the validity of these allegations, a civil trial was held in 1925 and a civil decree issued on May 6, 1927.⁴ The Star Canyon Creek Decree centered on two water rights, Proof of Appropriation V-01177 (Ryan) and Permit 2925, Certificate 575 (Gallio), and set forth the manner in which water could be appropriated under both. Proof V-01177 was determined to be the senior water right on the stream system with a decreed priority date of March 15, 1862. Permit 2529, Certificate 575, retained its March 25, 1925, priority date, which made it junior to Ryan's water right.⁵ However, the Nevada Supreme Court set aside the civil judgment and decree and remanded the case for a new trial.⁶ The Nevada Supreme Court also held that Gallio did not have a water right in the true sense of the word. The Court held that Gallio did not have a valid or legal appropriation of the waters of Star Canyon Creek, but rather all he had was a right to capture waste water that came off Margaret Ryan's fields and he did not have a water right that had vested under his permit/certificate in the true sense of appropriating water. All he acquired was a temporary right to whatever water escaped from the Ryan's irrigated fields. The Nevada Supreme Court noted that factually Gallio had built drains to capture water from the south and east sides of the Santa Clara Ranch and from the east side of the Star Creek Ranch. There is no evidence in the Office of the State Engineer that the Sixth Judicial District Court ever addressed the case on remand.

The State Engineer finds there is no right of direct diversion from Star Canyon Creek under Permit 2529, Certificate 575 or to convey water from Star Canyon Creek to anywhere. The State Engineer finds while there is no final decree on Star Canyon Creek, the 1927 civil decree that was set aside is substantial evidence to support the claim of vested right under Proof of Appropriation V-01177 and to validate which lands are water righted and in what quantity. The Sixth Judicial

⁴ *Gallio v. Ryan*, Decision, Sixth Judicial Court of the State of Nevada, in and for the County of Pershing, May 6, 1927.

⁵ File No. 2529, official records in the Office of the State Engineer.

⁶ *Gallio v. Ryan*, 52 Nev. 330 (1930).

District Court had found that the Santa Clara Ranch had the right to irrigate from Star Canyon Creek 77.5 acres at a duty of 3 acre-feet per acre with an additional quantity for transportation loss for a total water right of 358.75 acre-feet per season⁷ with an 1862 priority. It also found that the Star Creek Ranch (a.k.a. the Organ Home Ranch) had the right to irrigate from Star Canyon Creek 158.6 acres at a duty of 3 acre-feet per acre with an additional quantity for transportation loss for a total water right of 555.1 acre-feet per season with an 1862 priority.⁵

V.

After the issuance of the decree on May 27, 1927, and during the course of the appeal to the Nevada Supreme Court, two additional water rights were filed to appropriate the waters of Star Canyon Creek. One was a new appropriation and the other a change application.

Application 9008 was filed on August 10, 1929, by the Central Pacific Railway Company to appropriate 1.25 cfs of water for general railroad and domestic purposes at a point of diversion located within the NW¼ NE¼ of Section 24, T.31N., R.34E., M.D.B.&M.⁸ The remarks section of the application indicates that it was being filed in conjunction with a change application of water rights the railroad had obtained from Margaret Ryan under Proof of Appropriation V-01177. The remarks noted that the use by the railroad was contemplated as a year-round use, but that the railroad was aware that since the 1.25 cfs requested exceeds the dry weather flow of the stream that some future water storage would be contemplated. The remarks also indicate that the purpose of Application 9008 was to secure flow for the period of time not covered by Margaret Ryan's 1862 rights. Proof of Appropriation V-01177 claims season of use from March 15th to October 15th.

On September 20, 1929, the Central Pacific Railway Company filed Application 9061 to change the point of diversion, manner and place of use of a portion of Margaret Ryan's water right under Proof of Appropriation V-01177. The remarks section of the application indicates that the railroad had succeeded to all vested rights of Margaret Ryan, successor to Peter Organ, in the use of water of Star Canyon Creek and that it was understood that any right prior to that vested in Margaret Ryan and conveyed to the railroad not proposed for change by Application 9061 was to remain appurtenant to the lands described in the application for irrigation purposes. Permit 9008 and Permit 9061 were approved on May 28, 1930, to send water from Star Canyon Creek to the

⁷ Year-round use is allowed for stockwater and domestic purposes.

⁸ File No. 9008, official records in the Office of the State Engineer.

town of Imlay for railroad and municipal purposes. Both of these permits were eventually perfected with Certificates of Appropriation for 1.0 cfs issued on June 16, 1932.⁹

For many years water continued to be diverted under these certificated permits, however as activity at the rail yards declined, so did the need for water from Star Canyon Creek. By 2012, the State Engineer found sufficient grounds to declare Permits 9008, Certificate 1381, and Permit 9061, Certificate 1382, abandoned.¹⁰ Upon the abandonment of a perfected surface water permit, the water it held returned to its original source, which in this instance is represented by Star Canyon Creek. Once the water is returned, the abandoned water immediately becomes subject to appropriation by the first applicant if the application to appropriate complies with Nevada water law. The abandoned railway permits together represented an annual diversion rate of 1.0 cfs, and this is the maximum amount of water that can be applied for by any subsequent applicant. The State Engineer finds that Application 81977 is the first application to request the water abandoned by Ruling No. 6182.

VI.

Permit 80206 represents the most recent water right permit that has been issued on Star Canyon Creek. The approval of this permit on November 3, 2011, gave Phillip Geertson the right to appropriate water to support a proposed placer gold mine. To avoid any possible conflicts with Proof V-01177, the period of use for Permit 80206 was set from October 16th to April 15th of the following year.¹¹ While this permit currently holds the junior priority on the system, the State Engineer finds that it would be senior to any permit approved under the subject application.

VII.

The State Engineer finds that upon the declaration of abandonment of Permit 9008, Certificate 1381, and Permit 9061, Certificate 1382, the 1.0 cfs previously appropriated from Star Canyon Creek under these permits was returned to the source and is available for appropriation with the most junior priority of the stream.

VIII.

The State Engineer finds that under Proof of Appropriation V-01177 the Pruitts on Star Creek Ranch have a right to irrigate from Star Canyon Creek with a season of use from March 15th

⁹ File Nos. 9008 and 9061, official records in the Office of the State Engineer.

¹⁰ State Engineer's Ruling No. 6182, dated June 15, 2012, official records in the Office of the State Engineer.

¹¹ File No. 80206, official records in the Office of the State Engineer.

to October 15th. The State Engineer finds that the Huntsmen Ranch on Santa Clara Ranch has the right to irrigate from Star Canyon Creek with a season of use from March 15th to October 15th. In addition the State Engineer finds that there is no right of direct diversion from Star Canyon Creek under Permit 2925, Certificate 575.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹²

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:¹³

- 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 protectable 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.

Having returned a diversion rate of 1.0 cfs to Star Canyon Creek through the abandonment of Permit 9008, Certificate 1391 and Permit 9061, Certificate 1392, the State Engineer concludes that this water is now available for appropriation.

IV.

The State Engineer concludes that the approval of Application 81977 under a junior priority will not interfere with existing senior water rights that appropriate water from Star Canyon Creek.

V.

Application 81977 requests a new appropriation of Star Canyon Creek water to expand irrigated acreage to include areas that in the past did not have appurtenant water rights. The State Engineer concludes that the approval of Application 81977 would assist in bringing the Applicant back into compliance and the use of the water will not threaten to prove detrimental to the public interest.

¹² NRS Chapter 533.

¹³ NRS § 533.370(2).

RULING

The protest to Application 81977 is hereby overruled and Application 81977 is approved subject to:

1. The payment of the statutory permit fee;
2. Existing water rights on the source, and
3. A permitted diversion rate not to exceed 1.0 cfs.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 3rd day of
April, 2013.