

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

IN THE MATTER OF APPLICATION NUMBERS)
44025, 44036, 44047 AND 47495 TO)
APPROPRIATE WATER FROM FAWN BASIN)
SPRING, AN UNNAMED SPRING, SECRET)
SPRING AND SPRING "C" ALL LOCATED IN)
THE MARY'S RIVER AREA, ELKO COUNTY,)
STATE OF NEVADA.)

RULING

GENERAL

I.

Application 44025 was filed on June 29, 1981 by Ronald M. Florance to appropriate 0.10 c.f.s. of water from Fawn Basin Spring #1 for stockwatering of 500 head of cattle within the NW1/4 SE1/4 of Section 15, T.43N., R.60E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SE1/4 Section 15, T.43N., R.60E., M.D.B.&M.¹

Application 44036 was filed on June 29, 1981 by Ronald M. Florance to appropriate 0.10 c.f.s. of water from an Unnamed Spring for stockwatering of 300 head of cattle within the SE1/4 NW1/4 of Section 8, T.43N., R.60E., M.D.B.&M. The point of diversion is described as being within the SE1/4 NW1/4 Section 8, T.43N., R.60E., M.D.B.&M.¹

Application 44047 was filed on June 29, 1981 by Ronald M. Florance to appropriate 0.10 c.f.s. of water from Secret Spring for stockwatering of 500 head of cattle within the NW1/4 SW1/4 of Section 1, T.43N., R.59E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SW1/4 Section 1, T.43N., R.59E., M.D.B.&M.¹

¹ Public Record in the office of the State Engineer.

Application 47495 was filed on December 9, 1983 by Dalton Livestock to appropriate 0.032 c.f.s. of water from Spring "C" for stockwatering of 1,000 head of cattle within the SW1/4 NW1/4 of Section 10, T.38N., R.62E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NW1/4 Section 10, T.38N., R.62E., M.D.B.&M.¹

The subject applications were timely protested on February 5, 1982 and March 8, 1984 by the United States Bureau of Land Management generally on the grounds that the water is required for multiple use management of the public land and the source is a public water reserve which was reserved for public use under the authority of Executive Order 107 on April 17, 1926 and as identified in 43 CFR 2311. The water is therefore, not available for appropriation under Nevada State Law.

FINDINGS OF FACT

I.

The grounds for the United States Bureau of Land Management protest has been extensively and fully considered and ruled upon in prior proceedings.²

II.

The United States has not filed any claims with the State of Nevada to establish a claim of a reserved right by executive order on the sources described under the subject applications.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.³

² See State Engineers Ruling No. 3219 on Application 37061 et. al; issued on July 26, 1985. Public record in the office of the State Engineer.

³ NRS Chapter 533.

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where ⁴:

- 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.

III.

The State Engineer concludes that if in fact these sources of water meet the criteria of a Public Water Reserve, they shall be recognized as such and any permits granted would be subject to the prior reserved right. Conversely if the sources do not qualify for reserved status, any permits granted on the sources would only be later in priority to any other vested rights that may exist. Only after a general adjudication of all rights would there be a determination made of the extent of any other vested claims and the validity of any claimed or unclaimed reserved rights.

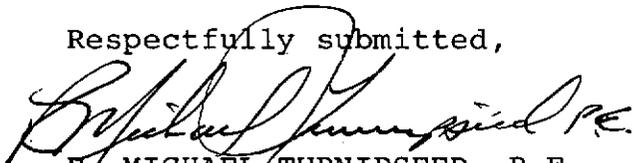
⁴ NRS Chapter 533.370

RULING

The protests to applications 44025, 44036, 44047 and 47495 are hereby overruled and said applications are hereby approved subject to:

1. Payment of the statutory permit fees.
2. The prior reserved rights of the United States if in fact these rights exist and the sources meet the proper criteria.
3. All other existing rights.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SW/pm

Date this 19th day of
September, 1990