

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

IN THE MATTER OF APPLICATIONS 45321)
AND 45322 FILED TO APPROPRIATE WATER)
FROM EIGHT-MILE SPRING AND TWO MILE)
SPRING LOCATED IN QUINN RIVER VALLEY)
(McDERMITT SUB-AREA) HUMBOLDT COUNTY,))
STATE OF NEVADA.)

SUPPLEMENTAL
RULING

GENERAL

I.

Application 45321 was filed on February 10, 1982, by Nevada First Corporation to appropriate 0.0156 c.f.s. of water from Eight Mile Spring for stockwatering of 500 head of cattle within SE1/4 NE1/4 Section 19, T.46N., R.39E., M.D.B.&M.; NE1/4 NW1/4 Section 23, SW1/4 NE1/4 of Section 22, T.46N., R.38E., M.D.B.&M. The point of diversion is described as being within the SE1/4 NE1/4 Section 19, T.46N., R.39E., M.D.B.&M.¹

Application 45322 was filed on February 10, 1982, by Nevada First Corporation to appropriate 0.0156 c.f.s. of water from Two Mile Spring for stockwatering of 500 head of cattle within SE1/4 NE1/4 Section 17, T.46N., R.39E., M.D.B.&M. The point of diversion is described as being within the SE1/4 NE1/4 Section 17, T.46N., R.39E., M.D.B.&M.¹

II.

Application 45321 was timely protested on June 18, 1982, by the Bureau of Land Management, Winnemucca District, on the following grounds:

The subject spring, known as Eight Mile Spring has a pipeline constructed on it which is a BLM project (#4152), completed in 1971 at a cost of \$4400 of public funds. The water from this spring is necessary for the function of this improvement.

¹ Public record in the Office of the State Engineer filed under Application 45321 and 45322.

This 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. Presently the applicant Nevada First Corporation is not the livestock user in the area known as the U.C. Allotment. The applicant has leased the grazing privileges to John Falen.

At this time use by cattle is permitted by BLM from March 16 to June 30 and September 16 to November 30. The water right application is for year-round use. It is highly unlikely that good range management practices will ever allow a year-round grazing license in this allotment.

All grazing licenses are subject to adjustment or cancellation should it be necessary for good cause, thus the water rights must not be granted to a person or persons who may or may not have the privilege and grazing license in the future. The water will be available for public use including licensed livestock use in the future. To grant this party application to appropriate these waters would only serve to complicate management of the public lands for no good reason and with no advantage to the applicant as far as grazing and water use at this location.

Therefore the protestant requests that the application be denied and that an order be entered for such relief as the State Engineer deems just and proper.¹

III.

Application 45322 was timely protested on June 18, 1982, by the Bureau of Land Management, Winnemucca District, on the following grounds:

The subject spring, known as Two Mile Spring and associated pipeline is a BLM project (#249), completed in 1982 at a cost of \$7533 of public funds. The applicant or his predecessor has entered into a cooperative agreement with BLM on this project. By this action, the title of the improvement rests with the United States.

This 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 106 on April 17, 1926 and as identified in 43 CFR 2311. The water is, therefore, not available for appropriation under Nevada State Law.

Presently the applicant Nevada First Corporation is not the livestock user in the area known as the U.C. Allotment. The applicant has leased the grazing privileges to John Falen.

At this time use by cattle is permitted by BLM from March 16 to June 30 and September 16 to November 30. The water right application is for year-round use. It is highly unlikely that good range management practices will ever allow a year-round grazing license in this allotment.

All grazing licenses are subject to adjustment or cancellation should it be necessary for good cause, thus the water rights must not be granted to a person or persons who may or may not have the privilege and grazing license in the future. The water will be available for public use including licensed livestock use in the future. To grant this party application to appropriate these waters would only serve to complicate management of the public lands for no good reason and with no advantage to the applicant as far as grazing and water use at this location.

Therefore the protestant requests that the application be denied and that an order be entered for such relief as the State Engineer deems just and proper.¹

FINDINGS

I.

By letter, dated December 20, 1989, this office requested the names of the permittee and current range user within which the point of diversion and place of use of Applications 45321 and 45322 are located.¹

II.

By letter, March 13, 1990, the United States Department of the Interior, Bureau of Land Management, stated that "the permittee and current range user for Applications 45321 and 45322 is John Falen." "The base property," is leased "from Circle A Ranches."¹

III.

Applications 45321 and 45322 were denied by State Engineer's Ruling, dated September 19, 1990, on the grounds that to grant applications for stockwatering purposes on public lands that the applicant is not the permittee or current range user and cannot demonstrate the ability to place the water to beneficial use, would not be in the public interest and welfare.

IV.

By letter dated October 4, 1990 written by Gary L. Bengochea, agent for Circle A Ranches Limited Partnership, the State Engineer finds that "Circle A Ranches L. P. and Nevada First Corporation are one and the same."²

² Public information in the Office of the State Engineer filed under Application 45321. See partnership agreement between Nevada First Corporation and Circle A Ranches L.P. also see lease to John Falen.

V.

Enclosed with the October 4, 1990 letter is a "Limited Partnership Agreement - Circle A Ranches Limited Partnership." General partners are listed as James Bonavia and James D. Fair of Circle A. Ranches L. P. The limited partner is listed as Nevada First Corporation, represented by James H. Childers, Vice President.²

VI.

Also enclosed in the October 4, 1990, letter is a lease agreement (UC Ranch Lease), dated September 1, 1988. The agreement states that Circle A Ranch Limited Partnership is the owner or agent for the owner ("Lessor"), and John Falen is the lessee. The water rights are to be used by John Falen (Lessee), but will remain in the ownership and subject to the covenants and restrictions imposed by the Circle A Ranches Limited Partnership.²

CONCLUSIONS

I.

The State Engineer has jurisdiction over the matter described herein.³

II.

The Limited Partnership Agreement and the UC Ranch Lease identify Nevada First Corporation as the current owner of record of Applications 45321 and 45322.

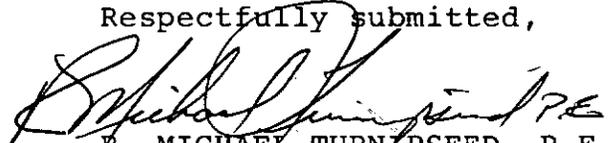
Therefore, the State Engineer determines that sufficient evidence has been presented to rescind the denial of said applications.

³ NRS Chapters 533 and 534.

RULING

The denial of Applications 45321 and 45322 is herewith rescinded and said applications will return to "Application" status. The final disposition of the applications will be determined pending further inquiry into the Bureau of Land Management protest.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SW/pm

Dated this 19th day of
October, 1990.