

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

IN THE MATTER OF APPLICATION NUMBERS )  
44496 AND 44497 FILED TO APPROPRIATE )  
WATER FROM PIUTE SPRING AND COTTONWOOD )  
CREEK SPRING NO. 1, LOCATED IN PARADISE )  
VALLEY, HUMBOLDT COUNTY, NEVADA. )

RULING  
3775

GENERAL

I.

Application 44496 was filed on September 24, 1981, by N.J. Ranches to appropriate 0.0156 c.f.s. of water from Piute Spring for stockwatering of 500 head of cattle within the NW1/4 SE1/4 of Section 18, T.38N., R.38E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SE1/4 Section 18, T.38N., R.38E., M.D.B.&M.<sup>1</sup>

Application 44497 was filed on September 24, 1981, by N.J. Ranches to appropriate 0.0156 c.f.s. of water from Cottonwood Creek Spring No. 1 for stockwatering of 500 head of cattle within the NE1/4 NE1/4 of Section 32, T.39N., R.38E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NE1/4 Section 32, T.39N., R.38E., M.D.B.&M.<sup>1</sup>

The subject applications were timely protested on August 5, 1982, 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.

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

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.<sup>2</sup>

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.

III.

A letter, dated March 13, 1990, from the United States Department of Interior, Bureau of Land Management, stated that the current range user within the place of use of Applications 44496 and 44497 is Fred Miller.<sup>1</sup>

IV.

A letter, dated December 14, 1990, from Gary L. Bengochea, representative for Circle A Ranches, Limited Partnership, stated that Fred Miller is leasing the Bloody Run Allotment from N.J. Ranches.<sup>1</sup>

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.<sup>3</sup>

-----  
<sup>2</sup> 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.

<sup>3</sup> NRS Chapter 533.

II.

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

- 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.

IV.

The State Engineer concludes that the issuance of Permits under Applications 44496 and 44497 to N.J. Ranches would not conflict with existing rights or prove detrimental to the public interest based on the lease agreement between Fred Miller and N.J. Ranches.

---

<sup>4</sup> NRS Chapter 533.370

RULING

The protests to applications 44496 and 44497 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 17th day of

January, 1991