

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

IN THE MATTER OF APPLICATION 48556)
FILED TO APPROPRIATE THE PUBLIC)
WATERS FROM WILLOW SPRING, GRIDLEY)
LAKE VALLEY GROUNDWATER BASIN (3),)
HUMBOLDT COUNTY, NEVADA.)

RULING

4311

GENERAL

I.

Application 48556 was filed on November 19, 1984, by Bandera Energy and Minerals Corporation to appropriate 0.20 cubic feet per second (cfs) of water from Willow Spring for mining, milling and domestic purposes within Lot 2 and Lot 38 Section 18, T.42N., R.28E., M.D.B.&M. The point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 8, T.42N., R.28E., M.D.B.&M.¹

II.

Application 48556 was timely protested on January 23, 1985, by Robert N. Caldwell as agent for R.D.D., Inc. on the following grounds:

R.D.D., Inc. is the owner of certain Proofs of Appropriation of water for irrigation and stockwatering purposes from Craine Creek, Cove Creek, and Center Creek, and their tributaries, specifically Proof 02631, 02632, 02633, 02634, 02635, 02644, 02646, 02547, 02649. These proofs were adjudicated during the "Matter of the Determination of the Relative Rights in and to the Water of Craine Creek, Knott Creek, Cove Creek, Corral Creek, and Center Creek, and their tributaries in Humboldt County, State of Nevada" No. 7295 filed in the District Court of the Sixth Judicial District of the State of Nevada and for the County of Humboldt, March 1, 1971.

Willow Spring is a tributary of Corral Creek, which is a tributary of Cove Creek, which is a tributary of Craine Creek. These streams are fed by snow melt from the mountains and springs. They have a high spring runoff due to melting snows and then recede to a minimum flow from the springs for the remainder of the year.

¹ File No. 48556, official records of the Office of the State Engineer.

Pine Forest Land and Livestock Company is also an owner to certain Proofs of Appropriation for stock watering from Cove Creek, Center Creek, Corral Creek, and tributaries.

Bandera Energy and Minerals Corporation has applied for .20 c.f.s. from Willow Spring which during the time following spring runoff will be almost the entire flow of water from this spring.

R.D.D., Inc. has expended thousands of dollars in recent years to improve the farmlands covered within the place of use of the above listed proofs of appropriation and has installed numerous water conservation structures to improve the water distribution and efficiency of water placed to beneficial use. Also, several projects are being studied for future water conservation improvements. However, even though R.D.D., Inc. makes every effort to conserve these surface water sources, they have had to drill deep water wells to supplement the surface waters during the summer months when the surface waters dwindle.

R.D.D., Inc. requests that Application 48556 be denied for the following reasons:

1. If allowed, this application will use the entire amount of water from this spring.
2. Further use of the waters of this spring and stream system may cause R.D.D., Inc. to have to drill additional wells to supplement their surface water rights.
3. The granting of this permit will reduce the amount of water available for irrigation by R.D.D., Inc. and thereby tend to impair the value of their existing rights.
4. The use of the water of Willow Springs for mining and milling purposes could cause contamination of the stream system by injection of chemicals harmful to livestock and vegetation.
5. The waters of this spring as a tributary to Craine Creek are presently being placed to a beneficial use by Pine Forest Land and Livestock Company and R.D.D., Inc. for stockwatering purposes on an annual basis for approximately 4150 cattle and by R.D.D., Inc. from March 15th to November 1st of each year for irrigation on a minimum of 300 acres.

III.

Application 48556 was also timely protested on March 8, 1985, by Bruce R. Scott, agent for Pine Forest Land & Livestock Company on the following grounds:

Protestant owns property in the area and has grazing rights on lands surrounding this spring. Protestant and predecessors in interest have used this spring since prior to 1905 for watering livestock. Protestant claims vested rights on the source. Until the source is adjudicated, protestant claims there are no unappropriated waters in the source and that approval of this application would be detrimental to the public welfare.

FINDINGS OF FACT

I.

The applicant and agent were notified by certified mail on May 27, 1993, to submit additional information to the State Engineer's Office regarding the use of water as identified under the application. The notice to Bandera Energy and Minerals Corporation was returned by the U.S. Postal Service labelled "Forwarding Order Expired, Return to Sender."¹ The notice to Jonathan R. Caldwell, agent for the applicant, was also returned by the U.S. Postal Service labelled "Return to Sender - Moved Left No Address."¹ The State Engineer finds that no information was received in response to the request for information.¹

II.

The applicant and agent were again notified by certified mail on June 2, 1994, to submit the additional information requested by the State Engineer's Office. The notice to applicant was returned by the U.S. Postal Service labelled "Address Unknown - Return to Sender."¹ The notice to agent was returned by the U.S. Postal Service labelled "Unclaimed".¹ The letter assigned a 30-day time limit to file the required information. The State Engineer finds that no information was received in response to the request for information.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²

II.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interest.³

III.

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

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public interest.⁴

IV.

The applicant has failed to submit the information requested by the State Engineer's Office. The State Engineer concludes that without the additional data sufficient information is not available for the State Engineer to properly guard the public interest.

V.

The State Engineer finds it is the responsibility of the applicant or its successor in interest to keep this office informed as to a current mailing address.

² NRS Chapters 533 and 534.

³ NRS 533.375.

⁴ NRS Chapter 533.370(3).

RULING

Application 48556 is hereby denied on the grounds that the applicant has not submitted the information requested by the State Engineer's Office and that without the additional information the granting of the application would be detrimental to the public interest. No finding is made on the validity of the protests submitted by R.D.D., Inc. and Pine Forest Land & Stock Company.

Respectfully submitted,


E. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/DJL/ab

Dated this 19th day of
March, 1996.