

IN THE OFFICE OF STATE ENGINEER
OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATIONS)
38432, 38433, 38434, 38435, 38436,)
38437, 38438, 38439, 38440, 38441)
AND 38442, INCLUSIVE, FILED TO)
APPROPRIATE THE PUBLIC WATERS OF)
NUMEROUS SPRING SOURCES WITHIN THE)
FISH LAKE VALLEY GROUNDWATER BASIN)
(117), ESMERALDA COUNTY, NEVADA.)

RULING

4813

GENERAL

I.

Application 38432 was filed on June 27, 1979, by Four Rent Inc., to appropriate 1.0 cubic foot per second (cfs) of water from Curve Springs for the stock watering of 100 head of livestock. The proposed point of diversion and place of use are described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 23, T.2S., R.36E., M.D.B.&M.¹

II.

Application 38433 was filed on June 27, 1979, by Four Rent Inc., to appropriate 1.0 cfs of water from Piper Springs for the stock watering of 100 head of livestock. The proposed point of diversion and place of use are described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T.2S., R.36E., M.D.B.&M.²

III.

Application 38434 was filed on June 27, 1979, by Four Rent Inc., to appropriate 1.0 cfs of water from Upper Ice House Springs for the stock watering of 100 head of livestock. The proposed point of diversion and place of use are described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T.2S., R.36E., M.D.B.&M.³

IV.

Application 38435 was filed on June 27, 1979, by Four Rent Inc., to appropriate 1.0 cfs of water from North Ice House Springs

¹ File No. 38432, official records in the office of the State Engineer.

² File No. 38433, official records in the office of the State Engineer.

for the stock watering of 100 head of livestock. The proposed point of diversion and place of use are described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, T.2S., R.36E., M.D.B.&M.⁴

V.

Application 38436 was filed on June 27, 1979, by Four Rent Inc., to appropriate 1.0 cfs of water from Cottonwood Springs for the stock watering of 100 head of livestock. The proposed point of diversion and place of use are described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, T.2S., R.36E., M.D.B.&M.⁵

VI.

Application 38437 was filed on June 27, 1979, by Four Rent Inc., to appropriate 1.0 cfs of water from North Ice House Springs for the stock watering of 100 head of livestock. The proposed point of diversion and place of use are described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, T.2S., R.36E., M.D.B.&M.⁶

VII.

Application 38438 was filed on June 27, 1979, by Four Rent Inc., to appropriate 1.0 cfs of water from East Ice House Springs for the stock watering of 100 head of livestock. The proposed point of diversion and place of use are described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, T.2S., R.36E., M.D.B.&M.⁷

VIII.

Application 38439 was filed on June 27, 1979, by Four Rent Inc., to appropriate 1.0 cfs of water from Stone Cabin Springs for the stock watering of 100 head of livestock. The proposed point of diversion and place of use are described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, T.2S., R.36E., M.D.B.&M.⁸

³ File No. 38434, official records in the office of the State Engineer.

⁴ File No. 38435, official records in the office of the State Engineer.

⁵ File No. 38436, official records in the office of the State Engineer.

⁶ File No. 38437, official records in the office of the State Engineer.

⁷ File No. 38438, official records in the office of the State Engineer.

⁸ File No. 38439, official records in the office of the State Engineer.

IX.

Application 38440 was filed on June 27, 1979, by Four Rent Inc., to appropriate 1.0 cfs of water from White Rock Springs for the stock watering of 100 head of livestock. The proposed point of diversion and place of use are described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T.2S., R.36E., M.D.B.&M.⁹

X.

Application 38441 was filed on June 27, 1979, by Four Rent Inc., to appropriate 1.0 cfs of water from Cave Springs for the stock watering of 100 head of livestock. The proposed point of diversion and place of use are described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26, T.2S., R.36E., M.D.B.&M.¹⁰

XI.

Application 38442 was filed on June 27, 1979, by Four Rent Inc., to appropriate 1.0 cfs of water from Willow Springs for the stock watering of 100 head of livestock. The proposed point of diversion and place of use are described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, T.2S., R.36E., M.D.B.&M.¹¹

XII.

Ownership of the subject applications was transferred into the names of James R. Boyce and Christine D. Boyce in the records of the office of the State Engineer on June 19, 1990.¹⁻¹¹

XIII.

All of the subject applications, were timely protested by the Bureau of Land Management, U.S. Department of the Interior (BLM) on the following grounds:¹⁻¹¹

This spring originates and flows on land managed by the Bureau of Land Management, U.S. Department of the Interior. This water has been used for wildlife propagation since 1845, when the land was ceded by Mexico to the United States. Deer and bighorn sheep as well as many small animals and birds, depend on water

⁹ File No. 38440, official records in the office of the State Engineer.

¹⁰ File No. 38441, official records in the office of the State Engineer.

¹¹ File No. 38442, official records in the office of the State Engineer.

from this spring. This land has also been used for livestock grazing since 1870 under Federal jurisdiction, in conjunction with many livestock operators. The Bureau has been directed to manage this land under multiple use guidelines.

FINDINGS OF FACT

I.

The springs that are the subject of this ruling are on public land. The land status maps provided by the BLM indicate that these springs arise on lands that have never been reserved from the public domain. Additionally, the spring sites are found within isolated drainages that are not tributary to larger stream systems. A determination was made through an examination of the public records of the office of the State Engineer which disclosed that there are no valid existing water right permits, proofs or public water reserve claims currently filed to appropriate surface water from the subject springs. The State Engineer finds that the approval of Applications 38432 through 38442, inclusive, would not conflict with existing water rights.

II.

Under the provisions of Nevada Revised Statute § 533.367, before a person may obtain a right to the use of water from a spring he must ensure that wildlife that customarily uses the water will have access to it. The State Engineer finds that any new appropriations of water from the subject sources can only be derived from that portion of the respective spring flows that are above and beyond the amount necessary to maintain a customary use of water by wildlife.

III.

The State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock on public lands unless

the applicant for the permit is legally entitled to place the livestock on the public lands for which the permit is sought.¹² On October 25, 1999, a representative of the office of the State Engineer met with personnel from the BLM at their Tonopah field office to discuss the current ownership of the range allotment that contains the spring sources and places of use described under Applications 38432 through 38442, inclusive. It was determined that these water sources are located within the Silver Peak Allotment which is currently held by James R. Boyce and Christine D. Boyce. The State Engineer finds that the applicants are the authorized range permittees for the federal grazing allotment that contains the subject points of diversion and places of use.

IV.

All of the subject applications request a diversion rate of 1.0 cfs that is well above the 0.0037 cfs of water that the State Engineer has determined to be sufficient for the stock watering of 100 head of cattle. The State Engineer finds that the amount of water requested for appropriation from each of the subject springs is in excess of that required for the described manner of use, therefore, any permits issued under Applications 38432 through 38442, inclusive, would be assigned through the permitting process a lesser diversion rate of water from each of the individual springs.

V.

Applications 38432 through 38442, inclusive, were each protested by the BLM on the grounds that their approval by the State Engineer would conflict with the BLM's directive to manage the land entrusted to them under multiple use guidelines. Examples were cited of the multiple uses of these waters including wildlife and stockwatering purposes. The State Engineer finds that the approval of the subject applications would not hinder the

¹² NRS 533.503(a).

multiple use of the land since the applications are for stockwatering purposes, but sufficient water must be retained at the springs under the NRS § 533.367 to support a customary use of the water for wildlife purposes.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹³

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:¹⁴

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

III.

Applications 38432 through 38442, inclusive, request appropriations of surface water from spring sources which are not currently held under valid existing water right permits, proofs, or claims of reserved rights. The State Engineer concludes that the approval of permits under Applications 38432 through 38442, inclusive, would not conflict with existing water rights.

IV.

The statutory requirements mandated under NRS § 533.367(a) assure that the granting of new appropriations of water from spring sources will not interfere with the customary use of the water by wildlife. The State Engineer concludes that any permits approved under the subject applications would be issued in

¹³ NRS Chapter 533.

¹⁴ NRS § 533.370(3).

accordance with NRS § 533.367(3) thereby allowing sufficient water to be retained at the source for wildlife.

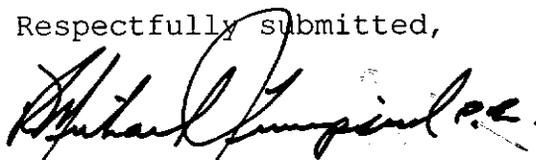
v.

Applications 38432 through 38442, inclusive, request appropriations of water for stockwatering purposes from surface water sources that are located upon federal land, more specifically, the Silver Peak Allotment. The utilization of these surface water sources for stock watering can only be accomplished through the issuance of a federal grazing permit that entitles the permittee to place livestock upon the range. Currently, James R. and Christine D. Boyce, who are also the owners of Applications 38432 through 38442, inclusive, hold the Silver Peak Allotment. The State Engineer concludes that it would not threaten the public interest to approve stock watering permits for individuals who are legally entitled by the federal government to place livestock upon the public lands.

RULING

The protests to Applications 38432, 38433, 38434, 38435, 38436, 38437, 38438, 38439, 38440, 38441 and 38442 are hereby overruled and said applications are approved subject to existing rights and the payment of the statutory permit fees.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/cl

Dated this 7th day of
December, 1999.