

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

IN THE MATTER OF APPLICATIONS)
40696, 40697, 40723, 40726, 41046, 42025,)
42026, 42027, 42028, 42030, 42031, 42045,)
42047, 42366, AND 42375 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF)
VARIOUS SPRING SOURCES WITHIN THE)
COLUMBUS SALT MARSH VALLEY)
HYDROGRAPHIC BASIN (118), MONTE)
CRISTO VALLEY HYDROGRAPHIC)
BASIN (136), BIG SMOKY VALLEY-))
TONOPAH FLAT HYDROGRAPHIC BASIN)
(137A), BIG SMOKY VALLEY-NORTHERN)
PART HYDROGRAPHIC BASIN (137B),)
MONITOR VALLEY-NORTHERN PART)
HYDROGRAPHIC BASIN (140A), IN)
ESMERALDA, MINERAL, LANDER, AND)
NYE COUNTIES, NEVADA.)

RULING

#5285

GENERAL

I.

Application 40696 was filed on February 25, 1980, by Monitor Valley Ranching Corporation to appropriate 0.01 cubic feet per second (cfs) of water from Sage Hen Spring for stockwatering purposes. The place of use is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13, T.15N., R.45 $\frac{1}{2}$ E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 13.¹

II.

Application 40697 was filed on February 25, 1980, by Monitor Valley Ranching Corporation to appropriate 0.01 cfs of water from an unnamed spring for stockwatering purposes. The place of use is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T.15N., R.46E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 18.²

¹ File No. 40696, official records in the Office of the State Engineer.

² File No. 40697, official records in the Office of the State Engineer.

III.

Application 40723 was filed on February 25, 1980, by Monitor Valley Ranching Corporation to appropriate 0.01 cfs of water from Mud Springs for stockwatering purposes. The place of use is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, T.15N., R.47E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 29.³

IV.

Application 40726 was filed on February 25, 1980, by Monitor Valley Ranching Corporation to appropriate 0.01 cfs of water from an unnamed spring for stockwatering purposes. The place of use is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T.15N., R.46E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 18.⁴

V.

Application 41046 was filed on April 9, 1980, by 7-K Ranching Corporation to appropriate 0.01 cfs of water from Henry Meyer Spring for stockwatering purposes. The place of use is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22, T.16N., R.46E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 22.⁵

VI.

Application 42025 was filed on August 14, 1980, by Zimmerman Ranching Corporation to appropriate 0.01 cfs of water from an unnamed spring for stockwatering purposes. The place of use is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, T.4N., R.37E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 34.⁶

VII.

Application 42026 was filed on August 14, 1980, by Zimmerman Ranching Corporation to appropriate 0.05 cfs of water from Willow Spring for stockwatering purposes. The place of use is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of

³ File No. 40723, official records in the Office of the State Engineer.

⁴ File No. 40726, official records in the Office of the State Engineer.

⁵ File No. 41046, official records in the Office of the State Engineer.

⁶ File No. 42025, official records in the Office of the State Engineer.

Section 16, T.4N., R.38½E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SW¼ of said Section 16.⁷

VIII.

Application 42027 was filed on August 14, 1980, by Zimmerman Ranching Corporation to appropriate 0.01 cfs of water from an unnamed spring for stockwatering purposes. The place of use is described as being located within the NW¼ SW¼ of Section 16, T.4N., R.38½E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SW¼ of said Section 16.⁸

IX.

Application 42028 was filed on August 14, 1980, by Zimmerman Ranching Corporation to appropriate 0.01 cfs of water from an unnamed spring for stockwatering purposes. The place of use is described as being located within the SW¼ SE¼ of Section 18, T.4N., R.38½E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ SE¼ of said Section 18.⁹

X.

Application 42030 was filed on August 14, 1980, by Zimmerman Ranching Corporation to appropriate 0.05 cfs of water from Laundry Spring for stockwatering purposes. The place of use is described as being located within the NW¼ NE¼ of Section 19, T.4N., R.38½E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 19.¹⁰

XI.

Application 42031 was filed on August 14, 1980, by Zimmerman Ranching Corporation to appropriate 0.05 cfs of water from Cook Spring for stockwatering purposes. The place of use is described as being located within the NW¼ SW¼ of Section 1, T.3N., R.38E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SW¼ of said Section 1.¹¹

⁷ File No. 42026, official records in the Office of the State Engineer.

⁸ File No. 42027, official records in the Office of the State Engineer.

⁹ File No. 42028, official records in the Office of the State Engineer.

¹⁰ File No. 42030, official records in the Office of the State Engineer.

¹¹ File No. 42031, official records in the Office of the State Engineer.

XII.

Application 42045 was filed on August 14, 1980, by Zimmerman Ranching Corporation to appropriate 0.05 cfs of water from Graham Spring for stockwatering purposes. The place of use is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, T.7N., R.37E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 32.¹²

XIII.

Application 42047 was filed on August 14, 1980, by Zimmerman Ranching Corporation to appropriate 0.05 cfs of water from Summit Spring for stockwatering purposes. The place of use is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, T.5N., R.36E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 12.¹³

XIV.

Application 42366 was filed on September 2, 1980, by 7-K Ranching Corporation to appropriate 0.01 cfs of water from Pete's Spring for stockwatering purposes. The place of use is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20, T.16N., R.46E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 20.¹⁴

XV.

Application 42375 was filed on September 3, 1980, by Zimmerman Ranching Corporation to appropriate 0.05 cfs of water from Springdale Canyon Springs for stockwatering purposes. The place of use is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, T.2N., R.40E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 15.¹⁵

XVI.

Applications 40696, 40697, 40723, 40726, 41046, 42025, 42026, 42027, 42028, 42030, 42031, 42045, 42047, 42366, and 42375 were assigned to Store Safe Redlands

¹² File No. 42045, official records in the Office of the State Engineer.

¹³ File No. 42047, official records in the Office of the State Engineer.

¹⁴ File No. 42366, official records in the Office of the State Engineer.

¹⁵ File No. 42375, official records in the Office of the State Engineer.

Associates, Ltd., a California general partnership doing business as Rock Springs Ranch on November 28, 1988.¹

XVII.

Applications 40696, 40697, 40723, 40726, 41046, and 42366 were timely protested by the United States Forest Service (USFS) on the following grounds:^{1, 2, 3, 4, 5, 14}

1. The proposed point of diversion is on National Forest land which the applicant does not control by lease, rent or ownership.
2. The source is a spring that has been continuously used to water livestock and wildlife since prior to 1870 which constitutes a vested right of the Forest Service for livestock watering purposes. This application would adversely affect the Forest Service vested right.
3. The applicant would not be able to develop or put the water to beneficial use without Forest Service approval, which would only be granted under certain circumstances.

XVIII.

Application 41046 was timely protested by Howard W. and Barbara C. Wolf on the following grounds:⁵

Henry Meyer Spring is located in the grazing allotment [sic] of the ranch owned by Howard W. and Barbara C. Wolf according to Forest Service grazing plan. Said spring is maintained by Wolf and not in the grazing plan of 7-K Ranching Co.

XIX.

Application 42366 was timely protested by Howard W. and Barbara C. Wolf on the following grounds:¹⁴

Petes Spring is located in the grazing allotment of the ranch owned by Howard W. and Barbara C. Wolf according to Forest Service grazing plan. Said spring is maintained by Wolf and not in the grazing plan of 7-K Ranching Co.

XX.

Applications 42025, 42026, 42027, 42028, 42030, 42031, and 42375 were timely protested by the United States Bureau of Land Management (BLM) on the following grounds:^{6, 7, 8, 9, 10, 11, 15}

The subject lands are vacant public lands. These springs are needed by the Bureau of Land Management to manage public lands in accordance with Congressionally mandated multiple use guidelines. This water is used by wildlife, wild horses and burros, and cattle. Plans to develop bighorn sheep habitat in this area by the BLM in cooperation with the Nevada Department of Wildlife will be hampered by appropriation of this water.

XXI.

Applications 42045 and 42047 were timely protested by the BLM on the grounds that U.S. Bureau of Land Management needs water to guarantee water availability for all livestock grazing, both present and future. This water is located in the Cedar Mountain allotment for Application 42045 and the Pilot Mountain allotment for Application 42047 and it is estimated that 575 cows and 25 horses will use the water from these allotments from March, 1 to February, 28. In addition the water is needed to guarantee water availability for game and nongame wildlife in the area, both present and future. Also, the water is a public water reserve, Exec. Order #107, and is not open to appropriation.^{12, 13}

XXII.

Application 42375 was timely protested by the Colvin Cattle Company on the following grounds:¹⁵

It is within my allotment boundry [sic].

FINDINGS OF FACT

I.

The applicant and its agent were notified by certified mail dated February 5, 2003, to advise this office in writing if they were interested in pursuing Applications 40696, 40697, 40723, 40726, 41046, 42025, 42026, 42027, 42028, 42030, 42031, 42045, 42047, 42366, and 42375. The applicants and agent were warned that failure to respond within 30 days would result in denial of the applications. Properly endorsed certified mail receipts were returned to the Office of the State Engineer by the U. S. Postal Service on February 7 and February 20, 2003, for the applicant and its agent.¹ To date, no information on this matter has been submitted to the State Engineer's office. The State Engineer finds that the applicant and its agent were properly notified of the request for additional information regarding Applications 40696, 40697, 40723, 40726, 41046,

42025, 42026, 42027, 42028, 42030, 42031, 42045, 42047, 42366, and 42375 and failed to respond.

II.

Under the provisions of NRS § 533.503, the State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock unless the applicant for the permit is legally entitled to place the livestock on the lands for which the permit is sought. On March 6, 2003, the BLM informed the State Engineer that it was unable to find any grazing permits in the name of Store Safe Redlands Associates, Ltd., a California general partnership doing business as Rock Springs Ranch for the places of use described under Applications 40696, 40697, 40723, 40726, 41046, 42025, 42026, 42027, 42028, 42030, 42031, 42045, 42047, 42366, and 42375.¹ On March 6, 2003, the USFS informed the State Engineer that Store Safe Redlands Associates, Ltd., a California general partnership doing business as Rock Springs Ranch was not an authorized range user for the places of use described under Applications 40696, 40697, 40723, 40726, 41046, and 42366.¹ The State Engineer finds that the applicant, Store Safe Redlands Associates, Ltd., a California general partnership doing business as Rock Springs Ranch, is not legally entitled to place livestock on the public lands described under Applications 40696, 40697, 40723, 40726, 41046, 42025, 42026, 42027, 42028, 42030, 42031, 42045, 42047, 42366, and 42375. The State Engineer finds to approve permits for stockwatering when the applicant is not authorized to use the lands for grazing would threaten to prove detrimental to the public interest.

III.

The State Engineer finds that there has been no correspondence from the applicant or its agent regarding Applications 40696, 40697, 40723, 40726, 41046, 42025, 42026, 42027, 42028, 42030, 42031, 42045, 42047, 42366, and 42375 for at least 10 years.¹

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹⁶

¹⁶ NRS chapter 533.

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.¹⁷

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:¹⁸

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

IV.

The applicant and its agent were properly notified of the requirement for additional information concerning these applications and have failed to submit this information to the State Engineer's office. The State Engineer concludes that failure to submit the requested information demonstrates the applicants lack of interest in pursuing Applications 40696, 40697, 40723, 40726, 41046, 42025, 42026, 42027, 42028, 42030, 42031, 42045, 42047, 42366, and 42375. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue permits under applications for which no interest is expressed.

V.

The State Engineer concludes that the applicant is not a current range user; therefore, the approval of Applications 40696, 40697, 40723, 40726, 41046, 42025, 42026, 42027, 42028, 42030, 42031, 42045, 42047, 42366, and 42375 would threaten to prove detrimental to the public interest.

¹⁷ NRS § 533.375.

¹⁸ NRS § 533.370(3).

RULING

Applications 40696, 40697, 40723, 40726, 41046, 42025, 42026, 42027, 42028, 42030, 42031, 42045, 42047, 42366, and 42375 are hereby denied on the grounds their issuance would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,


HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 6th day of

October, 2003.