

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

IN THE MATTER OF APPLICATION)
43968 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF CAMP GULCH)
SPRING #2 WITHIN THE BRUNEAU)
RIVER AREA HYDROGRAPHIC BASIN)
(38), ELKO COUNTY, NEVADA.)

RULING
599 6

GENERAL

I.

Application 43968 was filed on June 29, 1981, by Howard Ranches, later assigned to Marjorie A. Prunty, to appropriate 0.1 cubic foot per second (cfs) of water from Camp Gulch Spring #2 for stock-watering and domestic purposes to water 300 head of cattle from January 1 through December 31 of each year. The proposed place of use is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4, T.44N., R.57E., and within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, T.45N., R.57E., M.D.B.&M., unsurveyed. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, T.45N., R.57E., M.D.B.&M., unsurveyed.¹

II.

Application 43968 was timely protested by the United States Department of Agriculture, Forest Service (USFS) on the grounds that the USFS has a prior water right on the source (Proof of Appropriation No. 03740) and has developed the spring to its full extent; thus, there is no unappropriated water available to support the application. The USFS also alleges that there is no need for additional stock-water developments to serve this area and none will be permitted.¹

III.

Proof of Appropriation No. 03740 (Proof No. 03740) was filed on January 11, 1982, by the USFS claiming a pre-statutory vested water right with a priority date of 1872 to use 0.015 cfs of water from Camp Gulch Spring #2 for stock-watering purposes

¹ File No. 43968, official records in the Office of the State Engineer.

for up to 1,400 cattle and 50 deer and a season of use of May to December. The point of diversion is described as being located within the SE¼ SE¼ of said Section 33.²

IV.

Additionally, the USFS also filed Proof of Appropriation No. 08209 (Proof No. 08209) on June 15, 1995, claiming a pre-statutory vested water right with a priority date of 1880 to use 0.02 cfs of water from Camp Gulch Spring for stock-watering purposes for up to 82 cattle and a season of use of May 1 through November 30. The point of diversion is described as being located within the SE¼ SE¼ of Section 33, T.45N., R.57E., M.D.B.&M., unsurveyed.³

FINDINGS OF FACT

I.

Nevada Revised Statute (NRS) § 533.365(3) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to appropriate the public waters of the State of Nevada. The State Engineer finds that in the case of protested Application 43968 there is sufficient information contained within the records of the Division of Water Resources (Division) to gain a full understanding of the issues and a hearing on this matter is not required.

II.

On June 9, 2005, Application 43968 was assigned to Marjorie A. Prunty in the records of the Division; therefore, the State Engineer finds that Marjorie A. Prunty is the current owner of record of Application 43968.

III.

On July 29, 2008, the Division requested the USFS provide information as to the permittee, current range users if different than the permittee, name of the range allotment, number and kind of animals and period of use for the proposed place of use under Application 43968. By letter received on September 2, 2008, the USFS indicated that the Applicant has two grazing permits on the Bruneau Summer allotment and that the point of diversion for Application 43968 might be within that allotment.¹ The USFS further indicated that a portion of the SE¼ SE¼ was, and a portion was not, located in the

² Proof No. 03740, official records in the Office of the State Engineer.

³ Proof No. 08209, official records in the Office of the State Engineer.

allotment. Though the USFS letter indicated that the Applicant holds two grazing permits, the USFS maintains that the waters of the spring are fully appropriated as indicated by the USFS Proof No. 03738; thus, no additional water is available for appropriation. The USFS also argues that the Applicant would be unable to prove beneficial use under Application 43968 as it will not permit additional development at the source. The State Engineer finds that the Applicant holds grazing permits from the USFS for the area proposed by Application 43968.

IV.

The State Engineer notes that in the USFS protest it alleged that it held a prior water right on the source under Proof No. 03740; however, in its September 2, 2008, letter it referenced Proof No. 03738. The point of diversion identified in Proof No. 03738 is located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T.45N., R.57E., M.D.B.&M,⁴ which is not the same point of diversion applied for under Application 43968. The State Engineer finds that USFS Proof No. 03738 represents another spring source in a different section of land than the spring source filed for under Application 43968.

V.

On November 25, 2008, Division personnel conducted a field investigation at the Camp Gulch Spring #2 site. They noted evidence of both wildlife and stock use in the area and estimated the surface flow around the spring to be approximately 1 gallon per minute (gpm). They also noted that the point of diversion under Proof No. 03740 and Application 43968 are probably the same source.¹ The field investigators did not mention Proof No. 08209; however, the State Engineer believes that Proof No. 08209 also appears to be the same spring source as that identified under Application 43968. The State Engineer finds that points of diversion identified under Application 43968 and Proof Nos. 03740 and 08209 all occur at the same locale and represent the same spring source.

⁴ Proof No. 03738, official records in the Office of the State Engineer.

VI.

The standard duty of water for cattle is 20 gallons per day per head. Application 43968 requests 0.1 cfs and a total appropriation of water sufficient to water 300 cattle, being approximately 6.72 acre-feet annually. The grazing allotment allows for up to a maximum of 240 cow/calf pairs for a maximum time period of June 16 through October 15 of each year. A rate of 1 gpm or 1,440 gallons per day for a 120-day grazing season at 20 gallons per cow would be sufficient to water 72 cattle or approximately 0.53 acre-feet seasonally. The State Engineer finds that the quantity of water requested is minimal and there is water at the source. The State Engineer finds that other than the undetermined claims of pre-statutory vested water rights for stock-watering purposes there are no other permitted water rights on the source, there is unappropriated water at the source and use of the water will not interfere with existing rights; thus, the use of the water will not threaten to prove detrimental to the public interest.

VII.

In Nevada, Proofs of Appropriation remain undetermined claims until their validity is determined through an adjudication proceeding.⁵ The USFS' pre-statutory vested water right claims to use the water of Camp Gulch Spring #2 have not been adjudicated. The State Engineer finds the Applicant has grazing rights in the area surrounding the proposed point of diversion and a permit for stock-watering and domestic purposes may be considered; however, the State Engineer questions the inclusion of domestic use on this source. If a formal adjudication finds the USFS' claims of pre-statutory vested water rights to be valid, any permit issued under Application 43968 would be subject to and junior in priority to those existing rights.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁶

⁵ NRS § 533.090 – 533.185.

⁶ NRS chapter 533.

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:⁷

- 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 protectable 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.

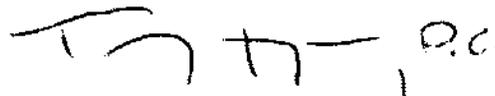
III.

The State Engineer recognizes that subject to a formal adjudication the Protestant's claim that senior vested rights may exist at the source are as yet undetermined and concludes that formal adjudication proceedings will be necessary for a final determination of the claimed vested rights. The State Engineer concludes that granting Application 43968 for the minimal amount of water requested and before a final determination of pending existing rights is made through the adjudication process, does not threaten to prove detrimental to the public interest.

RULING

The protest is overruled and Application 43968 is hereby approved for stock-watering purposes sufficient to water 72 cattle from June 16 to October 15, of each year subject to the payment of the statutory permit fees. No water right is being granted for domestic purposes as there is no evidence of any proposed actual domestic use.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/SJT/jm

Dated this 30th day of

July, 2009

⁷ NRS § 533.370(5).