

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION)
NUMBERS 44487 AND 44488 FILED)
TO APPROPRIATE WATER FROM CHINA)
GARDEN SPRING NO. 2 AND NO. 3)
PARADISE VALLEY, HUMBOLDT)
COUNTY, NEVADA.)
)

RULING

GENERAL

I.

Application 44487 was filed on September 24, 1981 by N.J. Ranches (Now Nevada First Corporation) to appropriate 0.0156 c.f.s. of water from China Garden Spring #2 for stockwatering of 500 head of cattle within the SW 1/4 SW 1/4 of Section 6, T.38N., R.38E., M.D.B.&M. The point of diversion is described as being within the SW 1/4 SW 1/4 Section 6, T.38N., R.38E., M.D.B.&M.¹

Application 44488 was filed on September 24, 1981 by N.J. Ranches (Now Nevada First Corporation) to appropriate 0.0156 c.f.s. of water from China Garden Spring #3 for stockwatering of 500 head of cattle within the SW 1/4 SE 1/4 of Section 6, T.38N., R.38E., M.D.B.&M. The point of diversion is described as being within the SW 1/4 SE 1/4 Section 6, T.38N., R.38E., M.D.B.&M.¹

II.

The subject applications were protested on May 24, 1982 by James R. Murdock on the following grounds:

"This application would seriously damage prior rights or applications applied for, thereby causing the creek to dry up at lower diversion points if granted."

The subject applications were protested on June 18, 1982 by the United State Bureau of Land Management on the following grounds:

¹ Public Record in the office of the State Engineer

"This 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."

Presently the applicant N.J. Ranches is not the livestock user in the area known as the Bloody Run Allotment. The applicant has leased the grazing privileges to Mrs. George Miller.

At this time use by cattle is permitted by BLM from November 15 to August 31. The water right application is for year-round use. It is highly unlikely that good range management practices will ever allow a year-round grazing license in this allotment.

All grazing licenses are subject to adjustment or cancellation should it be necessary for good cause, thus the water rights must not be granted to a person or persons who may or may not have the privilege and grazing license in the future. The water will be available for public use including licensed livestock use in the future. To grant this party application to appropriate these waters would only serve to complicate management of the public lands for no good reason and with no advantage to the applicant as far as grazing and water use at this location.¹

FINDINGS OF FACT

I.

By letter dated June 20, 1984 the protestant, James R. Murdock, retracts much of his objection to the applicant using water for livestock provided certain conditions are met.²

² See letter dated June 20, 1984 under application 44487 public record in office of the State Engineer.

II.

The basis for the United States Bureau of Land Management protest has been extensively considered and ruled upon in prior proceedings, and by the Nevada Supreme Court.³

III.

The United States has not filed any claims with the State of Nevada to establish a claim of a reserved right by executive order.¹

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.⁴

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where⁵:

- 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.

³ See State Engineers Ruling No. 3219 on Application 37061 et. al;

⁴ NRS Chapter 533.

⁵ NRS Chapter 533.370

III.

The State Engineer finds 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.

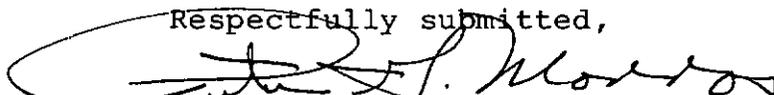
The State Engineer further finds that there is water in the China Garden Creek stream system in excess of protestant's James R. Murdock's permit 43525 for 0.02 c.f.s. for irrigation and domestic use.

RULING

The protests to applications 44487 and 44488 are hereby overruled and said applications are hereby approved subject to the following conditions:

1. Payment of the statutory permit fees.
2. To the prior reserved rights of the United States if in fact these sources meet the proper criteria.
3. Leaving or returning all water not consumed by the livestock in the natural stream channel.
4. Subject to any or existing rights.

Respectfully submitted,



Peter G. Morros
State Engineer

PGM/RMT/pm

Date this 29th day of
September, 1989