

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 54176)
FILED TO APPROPRIATE WATER FROM AN)
UNNAMED SPRING IN CARSON DESERT-)
PACKARD VALLEY, PERSHING COUNTY,)
NEVADA.)

RULING

GENERAL

Application 54176 was filed on November 16, 1989, by Marshall Earth Resources, Inc. to appropriate 0.01114 c.f.s. of water from an unnamed spring to be used for mining purposes within portions of Lot 5, Lot 6, Lot 7, Section 3, T.27N., R.34E., M.D.B.&M. and portions of the NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, T.27N., R.34E., M.D.B.&M. The point of diversion is described as being within Lot 5 (SW $\frac{1}{4}$ SW $\frac{1}{4}$) Section 3, T.27N., R.34E., M.D.B.&M.¹

The subject application was timely protested on April 11, 1990, by the United States Bureau of Land Management on the following grounds:

1. "This spring is located on public land and is a public water reserve. There is not any excess water available for appropriation."
2. "No written notice for earth disturbing activity has been received by this office for the place of use described in the application (Lots 5-7, Sec. 3, T. 27 N., R. 34 E.) which are on public land. This type of activity would be in violation of the 43 CFR 3809 regulations."

FINDINGS OF FACT

I.

The grounds for the United States Bureau of Land Management protest has been extensively and fully considered and ruled upon in prior proceedings.²

¹ Public record in the office of the State Engineer.

II.

The United States has filed a claim with the State of Nevada to establish a claim of a reserved right by executive order on the sources described under the subject application (R-05099).

CONCLUSIONS

I.

The state Engineer has jurisdiction of the parties and the subject matter of this action.³

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁴

- 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.

III.

The State Engineer concludes that if in fact this source of water does meet the criteria of a Public Water Reserve, it shall be recognized as such and any permits granted would be subject to the prior reserved right. Conversely if the source does not qualify for reserved status, any permits granted on the source would only be later in priority to any other vested rights that may exist. Only after a general adjudication of

³ NRS Chapter 533.

⁴ NRS Chapter 533.370.

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.

RULING

The protest to Application 54176 is hereby overruled and said application is hereby approved subject to:

1. Payment of the statutory permit fees.
2. The amount of water diverted is limited to 500 gallons/day, and only for the period required for the exploratory drilling.
3. The prior reserved rights of the United States if in fact these rights exist and the sources meet the proper criteria.
4. To all other existing rights.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/GC/bk

Dated this 31st day of
July, 1990.