

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

IN THE MATTER OF APPLICATION 37944)
FILED TO APPROPRIATE WATER FROM)
MAPLE SPRING IN PINE VALLEY, ELKO)
COUNTY, NEVADA.)

RULING

#3841

GENERAL

I.

Application 37944 was filed on April 18, 1979 by Floyd C. Slagowski to appropriate .05 c.f.s. of water from Maple Spring for stockwatering of 1,000 head of cattle within Lot 3 Section 34, T.29N., R.53E., M.D.B.&M. The point of diversion is described as being within Lot 3 Section 34, T.29N., R.53E., M.D.B.&M.¹

The subject application was timely protested on March 28, 1980 by the United States Bureau of Land Management generally on the grounds that the 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.

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.

² See State Engineers Ruling No. 3219 on Application 37061 et al; issued on July 26, 1985. Public record in the office of the State Engineer.

II.

The United States has not filed any claims with the State of Nevada to establish a claim of a reserved right by Executive Order on the source described under the subject application.

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 meets the criteria of a Public Water Reserve, it shall be recognized as such and any permit 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 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.

³ NRS Chapter 533.

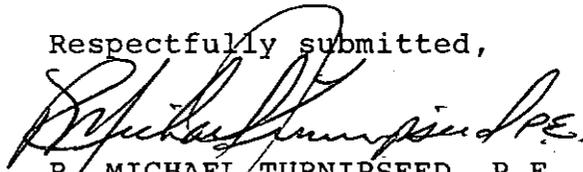
⁴ NRS Chapter 533.370

RULING

The protest to application 37944 is hereby overruled and said applications are hereby approved subject to:

1. Payment of the statutory permit fees.
2. The prior reserved rights of the United States if, in fact, these rights exist and the source meets the proper criteria.
3. All other existing rights.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/GC/pm

Date this 23rd day of
October, 1991.