

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

IN THE MATTER OF APPLICATION NUMBERS 38366,)
38367, 38371 AND 38372 FILED TO APPROPRIATE)
THE PUBLIC WATERS FROM AN UNDERGROUND SOURCE)
WITHIN MARY'S RIVER AREA GROUNDWATER BASIN,)
ELKO COUNTY, NEVADA.)

RULING

4136

GENERAL

I.

Application 38366 was filed on June 19, 1979, by W.H. Gibbs Company to appropriate 0.05 cfs of water from an underground source for stockwatering of 500 to 1000 head of cattle within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, T.42N., R.61E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 6, T.42N., R.61E., M.D.B.&M.¹

II.

Application 38367 was filed on June 19, 1979, by W.H. Gibbs Company to appropriate 0.05 cfs of water from an underground source for stockwatering of 500 to 1000 head of cattle within Lot 5 of Section 6, T.42N., R.61E., M.D.B.&M. The point of diversion is described as being within Lot 5 Section 6, T.42N., R.61E., M.D.B.&M.¹

III.

Application 38371 was filed on June 19, 1979, by W.H. Gibbs Company to appropriate 0.05 cfs of water from an underground source for stockwatering of 500 to 1000 head of cattle within Lot 2 of Section 35, T.43N., R.60E., M.D.B.&M. The point of diversion is described as being within Lot 2 Section 35, T.43N., R.60E., M.D.B.&M.¹

IV.

Application 38372 was filed on June 19, 1979, by W.H. Gibbs Company to appropriate 0.5 cfs of water from an underground source for stockwatering of 500 to 1000 head of cattle within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35, T.43N., R.60E., M.D.B.&M. The point of diversion is described as being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 35, T.43N., R.60E., M.D.B.&M.¹

¹ Public record in the office of the State Engineer.

V.

The subject applications were timely protested on May 9, 1980 by the United States Department of Interior, Bureau of Land Management, generally on the following 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 have been extensively and fully considered and ruled upon in prior proceedings.²

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 sources 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.

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

³ NRS Chapter 533 and 534.

⁴ NRS Chapter 533.370.

III.

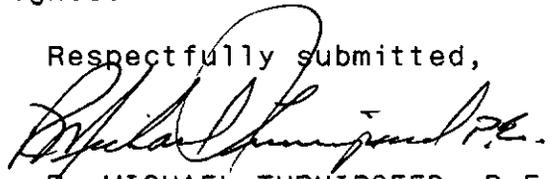
The State Engineer concludes that if, in fact, these sources of water meet the criteria of a Public Water Reserve, they shall be recognized as such and any permits granted would be subject to the prior reserved right. Conversely, if the sources do not qualify for reserved status, any permits granted 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.

RULING

The protest to Applications 38366, 38367, 38371 and 38372 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 rights exist and the sources meet the proper criteria.
3. To all other existing rights.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/KJ/pm

Dated this 15th day of
August, 1994.