

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

IN THE MATTER OF APPLICATIONS 52079)
AND 52589 FILED TO APPROPRIATE THE)
PUBLIC WATERS FROM GRAND TRUNK SPRING)
WITHIN THE GRASS VALLEY BASIN (71),)
HUMBOLDT COUNTY, NEVADA)

RULING

4285

GENERAL

I.

Application 52079 was filed on May 4, 1988, by Eisenhower Medical Center to appropriate 0.5 cubic feet per second (cfs) of water from the Grand Trunk Spring, Humboldt County, Nevada, for stockwatering 1,000 head of cattle and for domestic purposes for use within Section 35, T.33N., R.38E., M.D.B.&M. The point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 30, T.33N., R.39E., M.D.B.&M.¹

II.

Application 52079 was timely protested by the Bureau of Land Management on the following grounds:

Grand Trunk Spring is located on public (BLM) land and was developed by BLM in 1967 to provide water for wildlife. The excess water flows into a reservoir that is used for livestock on the Clear Creek allotment. Eisenhower Medical Center is not authorized to graze on the allotment. The water from the spring is needed for the wildlife and livestock on the allotment. This spring also qualifies as a public water reserve.¹

The BLM requested that Application 52079 be denied.

III.

On August 15, 1988, John J. Casey filed a protest to Application 52079 in the Office of the State Engineer. However, as Mr. Casey's protest was not timely filed, it was returned to him with the proviso that the grounds for the protest would be considered at the time a hearing was held.¹

¹ File No. 52079, official records of the Office of the State Engineer.

IV.

Application 52589 was filed on October 6, 1988, by Southern Pacific Land Company to appropriate 0.5 cfs of water from the Grand Trunk Spring, Humboldt County, Nevada, for stockwatering 1,000 head of cattle, 10 head of horses and for domestic purposes for use within Section 9, T.32N., R.38E., M.D.B.&M. The point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 30, T.33N., R.39E., M.D.B.&M.²

V.

Application 52589 was timely protested by John J. Casey on the following grounds: "Vested rights. Predecessor [sic] watered cattle in Sec 30, Sec 29 T33N R39E prior to 1900 AD." Mr. Casey requested that Application 52589 be denied.²

Application 52589 was also timely protested by the Bureau of Land Management on the following grounds:

Grand Trunk Spring is located on public land and is a public water reserve. It was developed by BLM in 1967 and is needed to water livestock on the Clear Creek allotment. Southern Pacific Land Company is not authorized to graze on this allotment.²

VI.

On February 1, 1989, the Bureau of Land Management filed a Proof of Appropriation (R-04777) claiming 0.018 cfs of water under a public water reserve for the purpose of stockwatering 349 cattle and 1,141 sheep at Grand Trunk Spring under the authority of an Executive Order of April 17, 1926 (PWR 107).³ The proof claims that cattle water from March 1st through April 16th, and September 15th through February 28th, and the sheep water from November 20th through January 1st.

² File No. 52589, official records of the Office of the State Engineer.

³ Proof No. R-04777, official records in the Office of the State Engineer.

VII.

On August 24 1989, the Bureau of Land Management filed another Proof of Appropriation (R-04898) claiming 0.018 cfs of water under a public water reserve for the purpose of stockwatering 349 cattle and 1,141 sheep at Grand Trunk Spring again under the authority of an Executive Order of April 17, 1926 (PWR 107).⁴ The season of use was described as September 1st through March 1st with the qualification that the season of use may change, but the number of animals would remain the same. m

VIII.

After all parties of interest were duly noticed by certified mail, an administrative hearing was held with regard to Applications 52079 and 52589 on November 8, 1989, at Winnemucca, Nevada, before representatives of the Office of the State Engineer. Evidence and testimony were received into the record regarding the protests to the applications as well as the merits of the applications.⁵ Neither of the applicants appeared at the hearing, but Mr. Donnell Richards represented he was acting on behalf of applicants Southern Pacific Land Company and Eisenhower Medical Center.⁵ Nor did the protestant John Casey appear at the hearing, but rather he was represented by his brother William Casey.⁵ Carol Marchio and Paul Jancar appeared on behalf of Protestant Bureau of Land Management.⁵

FINDINGS OF FACT

I.

At the administrative hearing, Protestant Mr. Casey disputed the location of Grand Trunk Spring⁶ arguing that the survey was in

⁴ Proof No. R-04898, official records in the Office of the State Engineer.

⁵ Transcript of Public Administrative Hearing before the State Engineer, November 8, 1989.

⁶ Transcript, p. 20.

error. The hearing officer granted Mr. Casey two weeks after the close of the hearing to file evidence of this error in survey. Mr. Casey did not file any documentation or other evidence to support his claim that the location of Grand Trunk Spring as identified was in error. The State Engineer finds that Grand Trunk Spring is located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 30, T.33N., R.39E., M.D.B.&M., which is public land.

II.

Protestant BLM asserted that the water was needed by livestock and wildlife on the Clear Creek allotment. Carol Marchio of the BLM testified at the administrative hearing that no one was permitted to graze livestock on the Clear Creek allotment.⁷ The Protestant BLM did not present any evidence that water from the spring had been appropriated by anyone permitted to use the public land for grazing. The places of use identified under both Application 52079 and Application 52589 are private land. The State Engineer finds that no evidence supports the protestant BLM's claim that the water is needed to water livestock on the Clear Creek allotment.

III.

On June 13, 1930, Certificate 1654 was issued under Permit 8341 for use of 0.013 cfs of water from Grand Trunk Spring, or an amount sufficient to water 1,800 head of sheep and 60 head of cattle, with the period of use being year round. The point of diversion is described as located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 30, T.33N., R.39E., M.D.B.&M.⁸ The State Engineer finds that Certificate 1654 remains in good standing in that it has not been declared by the State Engineer as forfeited or abandoned. The State Engineer further finds that with the exception of the subject applications,

⁷ Transcript, p. 25.

⁸ File No. 8341, official records in the Office of the State Engineer.

certificate of appropriation and public water reserve claims, there are no additional active water rights or claims on file in the Office of the State Engineer claiming rights to use the waters from Grand Trunk Spring.

IV.

Evidence and testimony from the administrative hearing established that the flow of Grand Trunk Spring fluctuates over time. Carol Marchio testified on behalf of the BLM that measurements taken by BLM employees indicated the flow of Grand Trunk Spring is variable:⁹

1977	5 gallons per minute (gpm)
1982	5 gpm
1985	9.6 gpm
1988	Between 6.25 - 10.4 gpm
1989	17-20 gpm

Ernest Muller submitted evidence that he also measured the flow of Grand Trunk Spring in 1988 and found it to be 30 gpm.¹⁰ The State Engineer finds that Grand Trunk Spring flow is highly variable depending on the year and probably on the time of year when the measurements are taken and that 20 gpm is most likely the maximum quantity of water that can be expected to flow from Grand Trunk Spring.

V.

The quantity of water appropriated from the spring under Certificate 1654 is an amount sufficient to water 1,800 head of sheep and 60 head of cattle, an amount equal to 5.8 gpm; thus, 5.8 gpm is already appropriated from Grand Trunk Spring.¹¹ The quantity of water needed under Application 52079 to water 1,000

⁹ Exhibit No. 16, Public Administrative Hearing before the State Engineer, November 8, 1989, pp. 32-33.

¹⁰ Exhibit No. 12, Public Administrative Hearing before the State Engineer, November 8, 1989.

¹¹ The duty for the stockwatering of sheep is established at 4 gallons per day, and for cattle and horses at 20 gallons per day.

head of cattle is 20,000 gallons per day or 13.8 gpm. The State Engineer finds that if Grand Trunk Spring is flowing at the maximum expected rate of 20 gpm, enough water is available to support the quantity requested under Application 52079; however, if Grand Trunk Spring is flowing at a rate of less than 20 gpm, a sufficient quantity of water is not available in the source to support Application 52079.

VI.

No general adjudication of pre-statutory vested water rights or reserved water rights, under the provisions of NRS 533.090 - 533.320 has been concluded with regard to the waters at issue in this matter. Protestant John Casey did not present any evidence or testimony to support his claim of a vested right to use the waters of Grand Trunk Spring for stockwatering purposes.¹² No such claim of vested right has been filed in the Office of the State Engineer by Mr. Casey. The State Engineer finds that there is no evidence on the record establishing a claim of vested right for Mr. Casey to use the waters of Grand Trunk Spring for stockwatering purposes.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and subject matter of this action.¹³

II.

The State Engineer is prohibited by law from granting a permit where:

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or

¹² Transcript of Public Administrative Hearing before the State Engineer, November 8, 1989.

¹³ NRS Chapter 533.

- C. The proposed use threatens to prove detrimental to the public interest.¹⁴

III.

The State Engineer concludes that protestant BLM's claim that neither Eisenhower Medical Center or Southern Pacific Land Company are authorized to graze on the related allotment is irrelevant as the applicants did not apply to use the water on public lands.

IV.

The State Engineer concludes that the BLM did not provide any evidence that the water from Grand Trunk Spring is appropriated by any person entitled to graze livestock on the Clear Creek allotment.

V.

The State Engineer concludes that no general adjudication of pre-statutory or reserved water rights under the provisions of NRS 533.090 - 533.320 has been concluded with regard to the waters at issue in this matter.

VI.

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 source does not qualify for Public Water Reserve status, any permits granted on the sources would only be later in priority to any other vested or permitted rights that may exist on the source. 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.

VII.

The State Engineer concludes that in certain years the quantity appropriated under Certificate 1654 is the total flow from Grand Trunk Spring leaving no water available for appropriation.

¹⁴ NRS 533.370.

VIII.

The State Engineer concludes that when Grand Trunk Spring flows greater than 5.8 gpm, water is available for appropriation under Application 52079. During these times, the appropriation of water under Application 52079 would not conflict with existing rights.

IX.

The State Engineer concludes that any application granted for the appropriation of water from Grand Trunk Spring must ensure that wildlife which customarily use the spring will continue to have access to it.¹⁵

X.

The State Engineer concludes that by granting Application 52079 no water remains available for appropriation under Application 52589. The State Engineer further concludes that the approval of Application 52589 would conflict with existing rights.

XI.

The State Engineer concludes that the issuance of a permit under Application 52079 would not adversely affect water use by livestock under Proof No. R-04777 or Proof No. R-04898; however, 5.8 gpm must be left at the source to provide water for wildlife and for those uses under Permit 8341, Certificate 1654.

¹⁵ NRS 533.367.

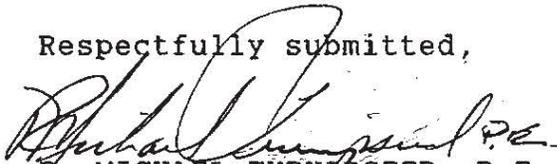
RULING

Application 52079 is approved subject to the following conditions:

1. Payment of statutory fees.
2. Prior Public Water Reserve reserved rights of the United States, if in fact these rights exist, and the source meets the proper criteria.
3. Ensuring that wildlife which customarily uses the water will have access.
4. All other existing rights, including Permit 8341; Certificate 1654.
5. Permission from the BLM to allow access to the spring and permission to pipe the water away from the source to private land.

Application 52589 is denied on the basis that no unappropriated water is available at the proposed source and the approval of said application would conflict with existing rights.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SJT/ab

Dated this 17th day of
January, 1996.