

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

IN THE MATTER OF APPLICATIONS 52125 FILED)
TO APPROPRIATE THE PUBLIC WATERS FROM AN)
UNNAMED SPRING (ALSO KNOWN AS TALL TREE)
SPRING) WITHIN THE GRASS VALLEY BASIN)
(71), HUMBOLDT COUNTY, NEVADA)

RULING

4293

GENERAL

I.

Application 52125¹ was filed on May 23, 1988, by Eisenhower Medical Center to appropriate 0.5 cubic feet per second (cfs) of water from an unnamed spring (also known as Tall Tree Spring), Humboldt County, Nevada, for stockwatering of 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 NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T.33N., R.39E. M.D.B.&M.

II.

Application 52125 was timely protested by the Bureau of Land Management (BLM) on the following grounds:

Tall Tree Spring, project number 1116, is located on public (BLM) land and was developed by BLM in 1967 for wildlife and livestock use. The water is needed for the livestock and wildlife on the Clear Creek allotment. Eisenhower Medical Center does not have grazing privileges on the Clear Creek allotment. If a water right is granted to Eisenhower Medical Center, then there will nto [sic] be sufficient water for proper livestock management on the allotment. Tall Tree Spring also qualifies as a public water reserve.¹

The BLM requested that Application 52125 be denied.

III.

Application 52125 was also timely protested by John J. Casey on the grounds of "vested water rights".¹

¹ File No. 52125, official records of the Office of the State Engineer.

IV.

On August 24, 1989, the BLM filed a Claim of Public Water Reserve (R-04901) claiming 0.018 cfs of water under a public water reserve for the purpose of watering 349 cattle and 1,141 sheep at Tall Tree Spring under the authority of an Executive Order of April 17, 1926 (PWR 107)². The claim indicates that cattle and sheep water from September 1st through March 1st of each year.

V.

On May 18, 1990, the BLM filed a Claim of Public Water Reserve (R-05104) claiming 0.019 cfs of water under a public water reserve for the purpose of watering 400 cattle and 1,141 sheep at the Tall Tree Spring under the authority of an Executive Order of April 17, 1926 (PWR 107)³. The claim indicates that cattle water from September 15th through February 28th and that sheep water from November 20th through January 1st of each year. The Proof has the qualification that the actual number of cows and sheep may vary slightly from year to year.

VI.

After all parties of interest were duly noticed by certified mail, an administrative hearing was held with regard to Application 52125 on May 18, 1990, 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 application as well as the merits of the application⁴. The applicant, Eisenhower Medical Center, did not appear at the hearing; however, Mr. Donnell Richards represented

² Proof No. R-04901, official records of the Office of the State Engineer.

³ Proof No. R-05104, official records of the Office of the State Engineer.

⁴ Transcript, Public Administrative Hearing before the State Engineer, May 18, 1990.

he was acting on behalf of the applicant. The protestant John Casey appeared at the hearing, as did Carol Marchio, on behalf of the Protestant BLM.

FINDINGS OF FACT

I.

Evidence and testimony from the administrative hearing⁵ established that the flow of Tall Tree Spring fluctuates over time. Carol Marchio testified on behalf of the BLM that measurements taken by BLM employees indicated the flow of Tall Tree Spring is variable:⁶

| | |
|-----------|------------------------------------|
| July 1977 | Not able to measure flow |
| June 1982 | Little in flow, but trough is full |
| May 1990 | 0.1 - 0.2 gpm (gallons per minute) |

Richard Donnell testified that Ernest Muller measured the flow of Tall Tree Spring on October 26, 1988, 100 feet below the watering tank in the main channel and found the flow to be 13 gpm.⁷ The State Engineer finds that Tall Tree Spring flow is highly variable depending on the year, and probably on the time of year when the measurements are taken, and that at times no measurable flow comes from the spring.

II.

The quantity of water needed under Application 52125 to water 1,000 head of cattle is 20,000 gallons per day or 13.8 gpm. The State Engineer finds there is not enough water available to support the quantity requested under Application 52125.

⁵ The Hearing Officer incorporated into this record the record of a hearing held on November 8, 1989, on Applications 52079 and 52589. Transcript, Public Administrative Hearing before the State Engineer, May 18, 1990, p. 9.

⁶ Exhibit No. 8 and Transcript, Public Administrative Hearing before the State Engineer, May 18, 1990, pp. 15-18.

⁷ Exhibit No. 12, Public Administrative Hearing before the State Engineer, November 8, 1989.

III.

The State Engineer finds that access by wildlife to water from a spring or water that has seeped to the surface of the ground is required by statute.⁸ The State Engineer further finds that providing water for wildlife has been declared a beneficial use.⁹

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and subject matter of this action.¹⁰

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
- C. The proposed use threatens to prove detrimental to the public interest.¹¹

III.

The State Engineer concludes that an adequate flow does not exist at the source to support the proposed use under Application 52125.

⁸ NRS 533.367.

⁹ State of Nevada v. Peter G. Morros, State Engineer, 104 Nev. 709, 706 P.2d 263 (1988).

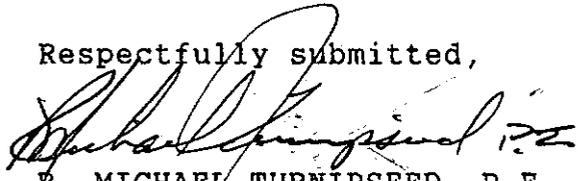
¹⁰ NRS Chapter 533.

¹¹ NRS 533.370

RULING

Application 52125 is hereby denied on the grounds that it would not be in the public interest to grant a permit on a source where there is not sufficient flow to ensure the customary use by wildlife as required under NRS 533.367. No ruling is made on the protests filed by the U.S.D.I. Bureau of Land Management or Mr. Casey.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/GGJ/ab

Dated this 29th day of
January, 1996.