

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

IN THE MATTER OF APPLICATION 60446)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNNAMED SPRING LOCATED)
WITHIN THE THOUSAND SPRINGS VALLEY)
TOANO-ROCK SPRING AREA HYDROGRAPHIC)
BASIN (189B), ELKO COUNTY, NEVADA.)

RULING

4744

GENERAL

I.

Application 60446 was filed on September 13, 1994, by James D. and Theresa L. Currivan to appropriate 0.003 cubic feet per second of water for stockwatering purposes from an unnamed spring described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T.39N., R.64E., M.D.B.&M. The proposed place of use is described as all of Section 11, T.39N., R.64E., M.D.B.&M.¹

II.

Application 60446 was timely protested by Walker-Winecup-Gamble, Inc., on the following grounds:¹

In a ruling dated February 28, 1985, the State Engineer found springs (44235, 44364) in a natural channel of Medicine Creek, to be tributary to Toano Draw and, in turn, Thousand Springs Creek. The rights to divert water for stockwatering is a part of the final decree "In the Matter of the Determination of Relative Rights in and to the Waters of Thousand Springs Creek and its tributaries, Elko County", filed December 6, 1929, and said decree fully adjudicates said water.

¹ File No. 60446, official records in the office of the State Engineer.

FINDINGS OF FACT

I.

An informal field investigation conducted by personnel from the State Engineer's Elko Branch Office determined that the flow generated at the point of diversion described under Application 60446 is tributary to nearby Thurston Spring, which is tributary to Thousand Springs Creek.¹ Two previous water rights applications which requested appropriations of water from Thurston Spring for stockwatering and irrigation purposes were denied by the State Engineer on the grounds that their approval would conflict with existing water rights established under the Thousand Springs Creek Decree.^{2,3} The State Engineer finds that the approval of Application 60446 would reduce the tributary flow to Thurston Spring and would adversely effect downstream water rights established under the Thousand Spring Creek Decree.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁵

A. there is no unappropriated water at the proposed source;

² State Engineer's Ruling No. 3139, dated February 28, 1985, official records in the office of the State Engineer.

³ State Engineer's Ruling No. 4742, dated June 9, 1999, official records in the office of the State Engineer.

⁴ NRS Chapter 533.

⁵ NRS § 533.370(3).

- B. the proposed use conflicts with existing rights; or
- C. the proposed use threatens to prove detrimental to the public interest.

III.

The Thousand Springs Creek Decree governs the use of all of the surface water sources which contribute tributary flows to the waters of Thousand Springs Creek, including the source of appropriation described under Application 60446. The State Engineer has on two separate occasions denied new appropriations of water specific to this portion of the Thousand Springs Creek watershed on the grounds that new appropriations of surface water would conflict with and adversely effect existing water rights established under the Thousand Springs Creek Decree. The State Engineer concludes that the approval of Application 60446 would conflict with existing water rights established under the Thousand Springs Creek Decree.

RULING

The protest to Application 60446 is upheld, and Application 60446 is hereby denied on the grounds that its approval would conflict with and adversely effect existing water rights.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/cl

Dated this 29th day of
June, 1999.