

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

IN THE MATTER OF APPLICATIONS)
43967, 43971, 43972, 43973, 43974, 43975)
AND 43976 FILED TO APPROPRIATE)
THE PUBLIC WATERS OF SPRING)
SOURCES WITHIN THE BRUNEAU)
RIVER AREA HYDROGRAPHIC BASIN)
(38), ELKO COUNTY, NEVADA.)

RULING
#5941

GENERAL

I.

Application 43967 was filed on June 29, 1981, by Howard Ranches, later assigned to Marjorie A. Prunty, to appropriate 0.1 cubic foot per second (cfs) of water from Camp Gulch Spring #1 for stock watering 300 head of cattle and for domestic purposes. The proposed place of use is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, T.45N., R.57E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 33.¹

II.

Application 43971 was filed on June 29, 1981, by Howard Ranches, later assigned to Marjorie A. Prunty, to appropriate 0.1 cfs of water from Mud Gulch Spring #2 for stock watering 300 head of cattle and for domestic purposes. The proposed place of use is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T.45N., R.57E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 29.²

III.

Application 43972 was filed on June 29, 1981, by Howard Ranches to appropriate 0.1 cfs of water from an unnamed spring for stock watering 100 head of cattle and for domestic purposes. The proposed place of use is described as being located within the

¹ File No. 43967, official records in the Office of the State Engineer.

² File No. 43971, official records in the Office of the State Engineer.

SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, T.47N., R.56E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 33.³

IV.

Application 43973 was filed on June 29, 1981, by Howard Ranches to appropriate 0.1 cfs of water from Trail Gulch Spring #1 for stock watering 200 head of cattle and for domestic purposes. The proposed place of use is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, T.47N., R.56E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 34.⁴

V.

Application 43974 was filed on June 29, 1981, by Howard Ranches to appropriate 0.1 cfs of water from Trail Gulch Spring #2 for stock watering 200 head of cattle and for domestic purposes. The proposed place of use is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, T.47N., R.56E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 34.⁵

VI.

Application 43975 was filed on June 29, 1981, by Howard Ranches to appropriate 0.1 cfs of water from West Deep Creek Spring for stock watering 200 head of cattle and for domestic purposes. The proposed place of use is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, T.47N., R.57E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 31.⁶

VII.

Application 43976 was filed on June 29, 1981, by Howard Ranches to appropriate 0.1 cfs of water from East Deep Creek Spring for stock watering 200 head of cattle and for domestic purposes. The proposed place of use is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, T.47N., R.57E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 19.⁷

³ File No. 43972, official records in the Office of the State Engineer.

⁴ File No. 43973, official records in the Office of the State Engineer.

⁵ File No. 43974, official records in the Office of the State Engineer.

⁶ File No. 43975, official records in the Office of the State Engineer.

⁷ File No. 43976, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

Applications 43967, 43971, 43972, 43973, 43974, 43975 and 43976 were timely protested by L. Kent Mays, Jr., on behalf of the USDA, Forest Service on grounds not to be considered in this ruling.

II.

In 2003, the Nevada Legislature amended NRS § 533.503 to provide, in part, that:

1. The State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock unless:
 - (a) The applicant for the permit is legally entitled to place the livestock on the lands for which the permit is sought, and:
 - (1) Owns, leases or otherwise possesses a legal or proprietary interest in the livestock on or to be placed on the lands for which the permit is sought; or
 - (2) Has received from a person described in subparagraph (1), authorization to have physical custody of the livestock on or to be placed on the lands for which the permit is sought, and authorization to care for, control and maintain such livestock;
 - (b) The forage serving the beneficial use of the water to be appropriated is not encumbered by an adjudicated grazing preference recognized pursuant to law for the benefit of a person other than the applicant for the permit; and
 - (c) The lack of encumbrance required by paragraph (b) is demonstrated by reasonable means, including, without limitation, evidence of a valid grazing permit, other than a temporary grazing permit, that is issued by the appropriate governmental entity to the applicant for the permit.

III.

By letter dated September 15, 2000, Mr. William A. Nisbet notified the Nevada Division of Water Resources (Division) that he had begun efforts to contact the assignee of portions of the range lands of the former Howard Ranches grazing allotments. The letter also indicated that Howard Ranches had sold their holdings. The letter requested the Division withhold action on Applications 43967 through 43985 until title conveyance had been provided, at which time the successor owners would go forward with the permitting process.¹

On March 28, 2008, the Office of the State Engineer sent correspondence requesting a written response within 30 days of the date of the letter indicating whether or not the Applicant had an interest in pursuing Applications 43972, 43973, 43974, 43975 and 43976.³ Correspondence submitted by Mr. Nisbet on April 2, 2008, and by Mr. Gary Stowell on May 5, 2008, indicated an interest in maintaining the applications. Despite the interest expressed, Howard Ranches remains the owner-of-record for Applications 43972, 43973, 43974, 43975 and 43976. The State Engineer finds that ample time to submit a Report of Conveyance to change the owner-of-record has elapsed, and without the receipt of the necessary fee, title documents or Report of Conveyance continued delay in processing the applications would not be in the public interest.

IV.

On July 29, 2008, the Office of the State Engineer requested the USDA, Forest Service to advise this office as to the current range users and allotment information for the places of use under Applications 43972, 43973, 43974, 43975 and 43976. The USDA, Forest Service informed the State Engineer on August 28, 2008, that there are no permitted allotments for the points of diversion associated with Applications 43972, 43973, 43974, 43975 and 43976.³ Also, current allotments are not located within the places of use.¹ The State Engineer finds that the Applicant or its successors are not legally entitled to place livestock upon the lands comprising the point of diversion and place of use under Applications 43972, 43973, 43974, 43975 and 43976. The State Engineer finds to approve a permit for stock watering when the applicant is not authorized to use the public lands for grazing would threaten to prove detrimental to the public interest.

V.

The March 28, 2008, letter from the Office of the State Engineer indicated that no action would be taken on Application 43972, 43973, 43974, 43975 and 43976, while the Bruneau River Adjudication was pending. This assertion might apply if the Applicant or successor were the current range users and were duly authorized to use the public lands for grazing. The documentation from USDA, Forest Service indicates that this is not the case. The State Engineer finds that action may be taken on Applications 43967, 43971,

43972, 43973, 43974, 43975 and 43976 outside the Bruneau River adjudication since the Applicant is not the authorized range user.

VI.

Documentation was submitted to change title for Applications 43967 and 43971 and Marjorie A. Prunty is the current owner-of-record. On July 29, 2008, the Office of the State Engineer requested the USDA, Forest Service to advise this office on the current range users and allotment information for Applications 43967, 43968 and 43971. The USDA, Forest Service informed the State Engineer on September 2, 2008, that there are no permitted allotments for Frank P., Margie and Gary Prunty at the points of diversion associated with Applications 43967 and 43971. Current allotments also are not located within the place of use associated with Applications 43967 and 43971.¹ The State Engineer finds that the Applicant, Marjorie A. Prunty, is not legally entitled to place livestock upon the lands comprising the point of diversion and places of use under Applications 43967 and 43971. The State Engineer finds to approve a permit for stock watering when the applicant is not authorized to use the public lands for grazing would threaten to prove detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁸

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁹

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

⁸ NRS chapter 533.

⁹ NRS § 533.370 (5).

III.

The State Engineer concludes that the Applicants are not the current range user for the allotment containing the water source; therefore, the approval of Applications 43967, 43971, 43972, 43973, 43974, 43975 and 43976 would threaten to prove detrimental to the public interest.

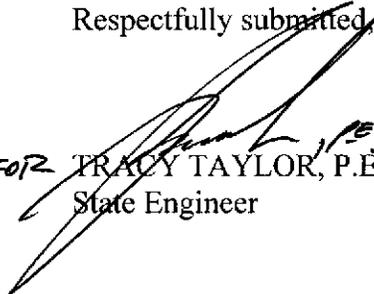
IV.

The State Engineer concludes that no further delay in the processing of the subject Applications will be allowed, regardless of the Applicant's request or the pending Bruneau River adjudication, as the Applicant is not the authorized range user and is not authorized to use these public lands for grazing.

RULING

Applications 43967, 43971, 43972, 43973, 43974, 43975 and 43976 are hereby denied on the grounds that to approve an application for stock-watering purposes where the applicant is not the authorized range user would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,

FOIR  TRACY TAYLOR, P.E.
State Engineer

TT/DJL/jm

Dated this 10th day of

February, 2009.