

IN THE MATTER OF APPLICATION 28907)
AND APPLICATION 28908, FILED BY)
RAINBOW MILLING COMPANY FOR PERMIS-))
SION TO APPROPRIATE WATER FROM SUR-))
FACE WATER SOURCES IN ESMERALDA))
COUNTY, NEVADA.))

R U L I N G

GENERAL:

Application 28907 and 28908 were filed by Rainbow Milling Co. on November 14, 1974 for permission to appropriate 0.5 cfs from Spring #1 and 0.5 cfs from O'Hara Spring, respectively, for milling and domestic purposes. Spring #1 is located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 5, T.7S., R.40E., M.D.B.&M. The proposed place of use is the mill site within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 3, T.7S., R.40E. O'Hara Spring is located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 32, T.6S., R.40E., M.D.B.&M. The place of use is the mill site within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 3, T.7S., R.40E., M.D.B.&M.

Application 28907 was protested by Lida Livestock on January 23, 1975, on the grounds that "to the best of our knowledge this spring is the same as our (Radford Spring, Certificate 4682)." The protestant further stated that there was not sufficient water for both livestock and milling uses.

Application 28908 was protested by Lida Livestock on January 23, 1975, on the grounds that "This Spring is presently boxed and troughed, and being used by Lida Livestock. The BLM in our cooperative agreement has placed much importance on this spring for the further development of stockwatering below it." The protestant requested the permit be issued subject to prior livestock use. This application was protested by Darlene Y. Haymes on February 6, 1975, on the grounds that "1. My associates and I have redeveloped and improved the spring at a cost to us of \$1,150.00. 2. O'Hara is located on my Lucky Strike #3 Lode Claim..... 3. We have been using this water for our prospecting, mining and domestic use and purposes for the last five years.....".

A field investigation was held under these protests on June 3, 1975.

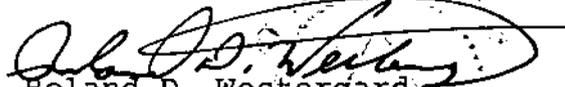
Certificate 4682, subject of Permit 14609, of record in the name of Henry F. Howison and Virginia L. Howison was issued March 28, 1958, for 0.0063 cfs of water from Radford Spring for stockwatering (200 head of cattle) purposes. The point of diversion is within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 3, T.7S., R.40E., M.D.B.&M.

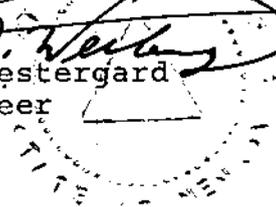
Certificate 1129, subject of Permit 6984, of record in the name of Arthur G., Jack A. and Barbara Linkletter was issued June 18, 1925 for 0.0365 cfs of water from Old State Line Tunnel for irrigation and domestic purposes. The point of diversion is within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 31, T.6S., R.40E., M.D.B.&M. The place of use is 3.65 acres within a portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 32, T.6S., R.40E., M.D.B.&M. This place of use is immediately below the location of O'Hara Spring. This place of use showed no evidence of having been farmed for many years as the entire area was overgrown with sagebrush, willows and other desert type shrubbery. Water was conveyed from Old State Line Tunnel through 2,500 feet of 6 inch pipe to the place of use.

RULING:

The protest filed under Application 28907 is herewith overruled on the grounds that there is unappropriated water available from this source, and a permit will be issued subject to any existing rights upon receipt of the statutory permit fees. The protest filed under Application 28908 are herewith overruled on the grounds that this Application was filed for water at a point that is not a natural source. Application 28908 is herewith denied on the grounds that the source (O'Hara Spring) is not a natural source but part of the distribution system under Certificate No. 6984.

Respectfully submitted,


Roland D. Westergard
State Engineer



RDW:RRD:sk

Dated this 15th day
of July, 1975..