

IN THE MATTER OF APPLICATION 41071)
FILED TO CHANGE THE MANNER AND PLACE)
OF USE OF THE WATERS HERETOFORE)
APPROPRIATED IN NYE COUNTY, NEVADA)

RULING

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INTRODUCTION

Application 41071 was filed to change the Manner and Place of Use of Permit 161, Certificate 10, on April 9, 1980.

FINDINGS OF FACT

Application 41071 was filed April 9, 1980, by the Calvada Farming Corporation to change the Manner and Place of Use of 2.54 c.f.s. on 15.02 acres: The existing and proposed Point of Diversion is within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T.18S., R.50E., M.D.B.& M., and at springs near the center of Section 7, and near the center of the NW $\frac{1}{4}$ of Section 18, T.18S., R.51E., M.D.B.& M. The water was used for Irrigation and Domestic purposes within portions of Sections 11 and 12, T.18S., R.50E., M.D.B.& M. The proposed Manner of Use is to be for Municipal purposes within portions of Townships 17S., R.50E., T.18S., R.50E., T.17S., R.51E., and T.18S., R.51E., M.D.B.& M. 1/

The granting of Application 41071 was protested on July 25, 1980, by the Bureau of Land Management on the following grounds:

"This water is located on public land administered by the BLM.

The change in the place of use of this water will interfere with multiple use management as directed by Congress. The change in the place of use could affect a junior water right to Unnamed Spring (Jackrabbit Spring - T.18S., R.51E., Section 18, NW $\frac{1}{4}$), Certificate No. 4443: Wildlife including birds, small mammals and fish including the Ash Meadows Pupfish (*Cyprinodon nevadensis mionectes*) and Ash Meadows Specked Dace (*Rhinichthys osculus nevadensis*) depend on water from the source. The Ash Meadows Pupfish has been classified rare by the Nevada Department of Wildlife and sensitive by BLM."

Application 41071 became ready for action by the State Engineer's office on July 26, 1980.

The date of priority of appropriation under Permit 11169, Certificate 4443 is September 16, 1954, and the date of priority of appropriation under Permit 161, Certificate 10, is July 16, 1906.

CONCLUSIONS

1. The State Engineer has jurisdiction of the parties and the subject matter of this action. 2/
2. 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 or change conflicts with existing rights, or
 - C. The proposed use or change threatens to prove detrimental to the public welfare. 3/
3. An Application to Change the Manner and/or Place of Use does not create an additional withdrawal from the source.
4. Every permit to appropriate water and every Certificate of Appropriation granted under any permit by the State Engineer is subject to existing rights. 4/

RULING

The protest to the granting of Application 41071 is overruled on the grounds that the proposed change does not conflict with existing rights nor impair the value of junior rights issued subject to existing rights or be detrimental to the public welfare.

Respectfully submitted,

William J. Newman

William J. Newman, P.E.
State Engineer _____

WJN/RWP/js

Dated this 4th day

of NOVEMBER, 1980.

FOOTNOTES

1. Public records within the office of the State Engineer.
2. NRS 533.025 and 533.030 subsection 1.
3. NRS 533.370 subsection 4
4. NRS 533.430 subsection 1