

IN THE MATTER OF APPLICATION 32762)
TO APPROPRIATE THE PUBLIC WATER)
FROM COTTONWOOD SPRINGS FOR)
STOCKWATER PURPOSES BY WHITE RIVER)
WATER AND AGRICULTURE DEVELOPMENT)
ASSOCIATION WITHIN WHITE RIVER)
VALLEY, WHITE PINE COUNTY, NEVADA.)

RULING

GENERAL

Application 32762 was filed on July 11, 1977, by White River Water and Agriculture Development Association to appropriate 1.0 c.f.s. of water from Cottonwood Springs in White River Valley for stockwater purposes. The point of diversion is described as being within the SW1/4 NW1/4 Section 28, T.11N., R.62E., M.D.B.&M., and the place of use is within the E1/2 W1/2 and E1/2 of Section 29, W1/2 W1/2 of Section 28, T.11N., R.62E., M.D.B.&M.¹

Application 32762 was timely protested on September 16, 1977, by Virginia A. Gardner on the grounds:²

"This application is on a spring which is located on my deeded ground, an old homestead, water being used for stockwater by me or my father-in-law since the ground was first homesteaded and deeded. I understood this spring was already adjudicated to this property and no water ever leaves this deeded property."

The protestant requests that Application 32762 be denied.

A formal field investigation was conducted on June 13, 1979, in an attempt to resolve the protest and to gather additional information for the State Engineer before action is taken on the subject application.³

Present at the field investigation were:

Virginia Gardner	Protestant
Neil Gardner	Protestant
Gene Clayton	Applicant
Van Petersen	Applicant
Vic Hill	Division of Water Resources
Mike Buschelman	Division of Water Resources

¹ Application 32762 is a public record on file in the office of the State Engineer.

² A copy of the protest is a public record on file with Application 32762 in the office of the State Engineer.

³ A copy of the field investigation is a public record on file with Application 32762 in the office of the State Engineer.

It was determined that the proposed point of diversion was about 3/8 of a mile south westerly of the proposed source of water - Cottonwood Springs. It also appeared there was no gravity flow from the spring to the proposed point of diversion.

At the time of investigation, not more than 1 - 2 gallons per minute were flowing at Cottonwood Springs. The applicant intended to use a ditch to convey water from the spring to the proposed point of diversion.

FINDINGS OF FACT

I.

The source of water for Application 32762 is approximately 3/8 of a mile from the proposed point of diversion and it is situated on a parcel of land owned by the protestant.

II.

Cottonwood Springs has limited flow (1 - 2 gallons per minute) and there is evidence that a claim of vested rights may presently exist on the source.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting a permit where:

1. there is no unappropriated water in the proposed source of supply, or
2. the proposed use or change conflicts with existing rights, or
3. the proposed use threatens to prove detrimental to the public interest.⁵

⁴ NRS 533.325.

⁵ NRS 533.370, subsection 3.

III.

The point of diversion described in Application 32762 is not at the named source of appropriation.

IV.

There may be undetermined vested rights on Cottonwood Springs.

RULING

The protest to the granting of Application 32762 is herewith upheld and Application 32762 is hereby denied on the grounds that the proposed point of diversion is not from the specified source of appropriation and approval of said application would conflict with existing rights.

Respectfully submitted



Peter G. Morros
State Engineer

PGM/GC/bl

Dated this 13th day of
AUGUST, 1984.