

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 38029)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF MOUND SPRINGS IN)
INDEPENDENCE VALLEY, ELKO COUNTY,))
NEVADA.)

RULING

GENERAL

Application 38029 was filed on April 26, 1979, by Blair and Josephine B. Johns to appropriate 0.05 c.f.s. of water from Mound Springs for stockwatering purposes within the NE1/4 NE1/4 Section 29, T.33N., R.64E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NE1/4 Section 29, T.33N., R.64E., M.D.B.&M.¹

Application 38029 was timely protested on November 23, 1979, by the United States Department of Interior, Bureau of Land Management, on the grounds that the spring lies on Bureau of Land Management land and is part of their public water reserve.¹

FINDINGS OF FACT

I.

The applicant had intended to file on a spring on his own private land and subsequently discovered that the described point of diversion and location under Application 38029 was in error.²

II.

The applicant has since filed Application 42409 to change the point of diversion to the SW1/4 NE1/4 Section 29, T.33N., R.64E., M.D.B.&M., which is located on his private land.¹

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.³

¹ Public record in the office of the State Engineer. See report of field investigation under 42409.

² Letter dated February 8, 1985, public record in the office of the State Engineer under Application 38029.

³ NRS 533.375.

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁴

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public interest.

III.

The protest to the granting of this application now becomes mute since the point of diversion has been changed by Application 42409 to land under the control of the applicant and there is no evidence that the granting thereof will interfere with existing rights.

RULING

No ruling is made on the protest to the granting of Application 38029 and Application 38029 will be approved concurrently with Application to Change 42409 upon receipt of the statutory permit fees.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/MT/bl

Dated this 4th day of
April, 1985.

⁴ NRS 533.370(3).