

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 39082)
FILED TO APPROPRIATE WATER FROM)
BARRELL SPRINGS, BLACK ROCK DESERT,)
PERSHING COUNTY, NEVADA.)

RULING

GENERAL

I.

Application 39082 was filed on September 20, 1979, by M.H. Fowler to appropriate 1.5 c.f.s. of water from Barrell Springs for mining and milling purposes within the SW $\frac{1}{4}$ Section 28, and NW $\frac{1}{4}$ of Section 33, T.34N., R.29E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 33, T.34N., R.29E., M.D.B.&M.¹

II.

The application was subsequently protested by the U.S. Bureau of Land Management on the following grounds:¹

Barrel Spring is located on land owned by the United States of America and administered for the public by the Bureau of Land Management. The water in this spring is part of the public water reserve and not subject to private appropriation. The public water reserve was created by the President's Executive Order of April 17, 1926 (PWR 107). The water is reserved for congressionally mandated multiple use management of the public lands as outlined in the Federal Land Policy and Management Act of 1976 and the Taylor Grazing Act of 1934. On Barrel Spring these uses include, but are not limited to, water for game and nongame wildlife, permitted livestock and the maintenance of riparian habitat. The amount of water reserved from Barrel Spring is the entire flow.

The United State of America claims vested rights for water for wildlife and maintenance of riparian and aquatic habitat dating from the Treaty of Guadalupe Hidalgo in 1848 and for cattle dating from the first known use in 1869.

Barrel Spring is located within the Seven Troughs Grazing Allotment. The grazaing privileges, which are not permanent in nature but are subject to change for cause or need, are attached to property currently owned or lease by the C-Punch

¹ Public record in the office of the State Engineer.

Corporation and Dufferena Sheep Ranch who own or control and are responsible for cattle or sheep using water in the allotment. Livestock grazing in the Seven Troughs Allotment is permitted and controlled by the land owner, the United States of America. Water from this source, partially available for livestock use along with wildlife and other uses, is subject to use only by livestock under control or person(s) with an existing valid grazing license; and then only for that part of the year for which the license is issued.

An archeological site (UCB Nv-Pe-104, BLM CrNV-020-1782) is located at Barrel Spring. The site was partially excavated in 1966 and 1967 by the Nevada State Museum and the University of California at Berkeley. It is one of the few open sites in Nevada to have both stratigraphy and faunal remains (Cowan, Richard A., 1972, The Archeology of Barrel Spring Site (Nv-Pe-104), Pershing County, Nevada. Department of Anthropology, University of California, Berkeley.)

Granting of this water right would encourage development which could destroy the remaining cultural deposit. In addition, Barrel Spring is within the one mile corridor of the Applegate-Lassen Emigrant Trail which is listed on the National Register of Historic Places.

FINDINGS OF FACT

I.

The remarks under item #12 of Application 39082 state "This application replaces permit 28871."¹ The State Engineer's records reflect that Permit 28871 was approved from an underground source.²

II.

The State Engineer's records also reflect a prior appropriation in Permit 17109, Certificate 6439 for 2.0 c.f.s. from Barrell Spring and/or well for mining and milling purposes."³

² Item #1 on Application 28871 states an underground source and item #8 states "well, pump & pipelines"; public record in the office of the State Engineer.

³ Item #1 Permit 17109 public record in the office of the State Engineer.

III.

Representatives of the State Engineer's office field examined Barrell Springs September 15, 1989, and found a small pond from which no water flows. There was evidence that the source is being used by livestock and wildlife.⁴

IV.

The State Engineer finds that the source under Application 39082 provides only sufficient water to fulfill prior rights and to provide water for wildlife.⁷

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.⁵

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁶

- 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 interest.

⁴ See Report of Field Investigation in file 39082, public record in the office of the State Engineer.

⁷ NRS 533.367.

⁵ NRS Chapter 533.

⁶ NRS Chapter 533.370.

III.

The State Engineer concludes that it would not be in the public interest to approve an application when the source provides no more water than is required to fill existing rights and provides water for wildlife.

RULING

Application 39082 is hereby denied on the grounds that to approve said application would interfere with prior rights and would interfere with watering by wildlife who customarily use this source. No ruling is made on the protest.

Respectfully submitted,



R. MICHAEL TURNIPSEED
State Engineer

RMT/bk

Dated this 26th, day of
February, 1990.