

IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBERS)
56701, 56702, 56703 AND 56704 FILED TO)
APPROPRIATE WATER FROM EAST SHARP PEAK)
SPRING, UPPER NORTH CREEK SPRING,)
BLACK ROCK SPRING AND FOURMILE SPRING)
ALL LOCATED WITHIN ANTELOPE VALLEY)
(NORTHERN PART), ELKO COUNTY, NEVADA.)

RULING

3954

GENERAL

I.

Application 56701 was filed on August 27, 1991 by Von L. Sorensen and Marian Sorensen to appropriate 0.0093 c.f.s. of water from East Sharp Peak Spring for domestic and stockwatering of 300 head of cattle within the NE1/4 NW1/4 of Section 33, T.29N., R.66E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NW1/4 Section 33, T.29N., R.66E., M.D.B.&M.¹

Application 56702 was filed on August 27, 1991 by Von L. Sorensen and Marian Sorensen to appropriate 0.0093 c.f.s. of water from Upper North Creek Spring for domestic and stockwatering of 300 head of cattle within the S1/2 SE1/4 Section 20 and NW1/4 NE1/4 of Section 29, T.29N., R.66E., M.D.B.&M. The point of diversion is described as being within the NW1/4 NE1/4 Section 29, T.29N., R.66E., M.D.B.&M.¹

Application 56703 was filed on August 27, 1991 by Von L. Sorensen and Marian Sorensen to appropriate 0.0093 c.f.s. of water from Black Rock Spring for domestic and stockwatering of 300 head of cattle within the NW1/4 SE1/4 of Section 28, T.29N., R.66E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SE1/4 Section 28, T.29N., R.66E., M.D.B.&M.¹

Application 56704 was filed on August 27, 1991 by Von L. Sorensen and Marian Sorensen to appropriate 0.0093 c.f.s. of water from Fourmile Spring for domestic and stockwatering of 300 head of cattle within the SW1/4 SW1/4 of Section 21, T.29N.,

¹ Public Record in the office of the State Engineer.

R.66E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SW1/4 Section 21, T.29N., R.66E., M.D.B.&M.¹

II.

The subject applications were timely protested on November 21, 1991 by the United States Bureau of Land Management generally on the following grounds to wit:

1. This spring source is located on public lands and is needed for multiple use management.
2. Each spring under consideration is a Public Water Reserve (PWR) which was reserved by Executive Order 107 on April 17, 1926. Water is needed for 100 horses and 150 cows (.0077 cfs) by BLM. Approximately 12 antelope also use this spring.
3. This spring lies within the Antelope Valley Wild Horse Herd Management Area (HMA). A wild horse census was conducted by BLM in February and September 1991. The census showed approximately 365 horses in this HMA of which over 200 horses use the Dolly Vardens (where this spring is located). The BLM Elko District Wild Horse and Burro Specialist estimates that approximately 100 horses use this spring from observations made in October 1991. There are few other water sources in this HMA.

FINDINGS OF FACT

I.

The grounds for the United States Bureau of Land Management protests have been extensively and fully considered and ruled upon in prior proceedings.²

II.

The United States has not filed any claims with the State of Nevada to establish a claim of a reserved right by Executive Order on the sources described under the subject applications.

² See State Engineers Ruling No. 3219 on Application 37061 et. al; issued on July 26, 1985. Public record in the office of the State Engineer.

III.

There are no other filings on these springs; therefore any water flowing from these springs would be available for application.

IV.

The applicant states in the remarks of the applications that "Improvements contemplated at this proposed point of diversion will not preclude continual use by wildlife at the source."¹ In addition NRS 533.367 specifically requires that wildlife which have customarily used a spring source must be assured access before a permit can be granted.

CONCLUSIONS

I.

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

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 or change conflicts with existing rights, or
- C. The proposed use or change threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that if, in fact, these sources of water meets the criteria of a Public Water Reserve, they shall be recognized as such and any permits granted would be subject to the prior reserved right. Conversely, if the sources do not qualify for reserved status, any permits granted on the sources would only be later in priority to any other vested rights that may exist. Only after a general adjudication of all rights would

³ NRS Chapter 533.

⁴ NRS Chapter 533.370

there be a determination made of the extent of any other vested claims and the validity of any claimed or unclaimed reserved rights.

IV.

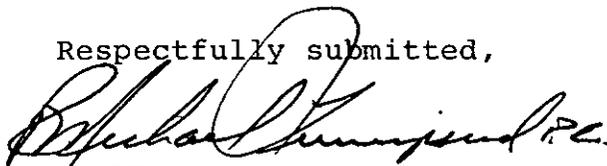
The State Engineer concludes that development of the springs would not preclude use of the water by the wild horse herds and other wildlife.

RULING

The protests to applications are hereby overruled and said applications are hereby approved subject to:

1. Payment of the statutory permit fees.
2. The prior reserved rights of the United States if, in fact, these rights exist and the source meets the proper criteria.
3. All other existing rights.
4. The continuing ability of wildlife to access the sources (NRS 533.367).

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SW/pm

Date this 7th day of
April, 1993.