

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

IN THE MATTER OF APPLICATION 44042)
FILED TO APPROPRIATE WATER FROM MUD)
SPRING LOCATED WITHIN THE SALMON FALLS)
CREEK AREA, ELKO COUNTY, NEVADA.)

RULING
4007

GENERAL

I.

Application 44042 was filed on June 29, 1981, by Ronald M. Florance to appropriate 0.10 c.f.s. of water from Mud Spring for stockwatering of 200 head of cattle within the SE1/4 NW1/4 of Section 12, T.43N., R.61E., M.D.B.&M. The point of diversion is described as being located within the SE1/4 NW1/4 Section 12, T.43N., R.61E., M.D.B.&M.¹

II.

The subject application was timely protested on February 5, 1982, by the United States Bureau of Land Management on the following grounds:

That the water is not available for appropriation under state law because it is already federally reserved as a public water. Land containing this water was withdrawn by E.O. April 17, 1926 as Public Water Reserve No. 107 (43 CFR 2311). Wherefore protestant prays that the application be denied....¹

FINDINGS OF FACT

I.

Application 44042 was denied by State Engineer's Ruling No. 3743, dated September 19, 1990, "on the grounds that to grant an application for stockwatering purposes on public lands that the applicant is not the permittee or current range user and cannot demonstrate the ability to place the water to beneficial use would not be in the public interest and welfare."¹

¹ Public record in the Office of the State Engineer.

II.

A Quitclaim Deed dated August 23, 1988, and filed on March 2, 1990, by Chilton Engineering and Surveying Ltd. transferred ownership of Application 44042 from Palos Verdes Investment Corporation, a California Corporation, and Ronald M. Florance and Elaine S. Florance to Dan Niedringhaus and Sharon K. Niedringhaus, an undivided one-half interest, and G.M. Schott also known as Geraldine M. Schott, a widow, and Norma S. Brown, Executrix of the Estate of Charles Schott, an undivided 1/2 interest.¹

Ronald M. Florance is president and Elaine S. Florance is secretary of the Palos Verdes Investment Corporation.¹

III.

By letter dated March 2, 1982, and confirmed in another letter, dated February 28, 1990, the United States Department of Interior, Bureau of Land Management, Elko District Office, stated that Palos Verdes Investment Corporation holds grazing rights which encompass the point of diversion and place of use as specified under Application 44042.¹

Palos Verdes Investment Corporation is the predecessor in interest to Niedringhaus and Schott.¹

IV.

By letter, dated February 28, 1990, the United States Department of Interior, Bureau of Land Management, Elko District Office, stated that the current range user is Boies Ranches.¹

However, personal communication with the United States Department of Interior, Bureau of Land Management, Elko District Office, confirms that the water source, Mud Spring, is divided by the range boundary between Boies Ranches, Bell Brand Ranches and Dan Niedringhaus, grazing allotments.²

² Telephone inquiry by Stephen J. Walmsley, Division of Water Resources, to Carol Marshio, Bureau of Land Management, on January 13, 1992.

V.

The grounds for the United States Bureau of Land Management's protest have been extensively and fully considered and ruled upon in prior proceedings.³

VI.

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 source described under the subject application.

VII.

A search of the records of the State Engineer find no other filings for water from Mud Spring.

VIII.

Mud Spring is located in a drainage which is shown to be an intermittent drainage to East Fork Deer Creek, tributary to Middle Fork Deer Creek, tributary to Deer Creek, tributary to Sun Creek, tributary to South Fork Salmon Falls Creek.⁴

IX.

Nevada Division of Water Resources personnel are familiar with the Mud Spring area and find that Mud Spring does not flow enough water to be tributary to the Salmon Falls Creek drainage.⁵

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination⁶.

³ See State Engineer's Ruling No. 3219 on Application 37061 et al; issued on July 26, 1985. Public record in the office of the State Engineer.

⁴ U.S. Geological Survey 7.5 Minute Quadrangle titled: GILMER RANCH, NEV.

⁵ Personal communication with Steve Brown on September 22, 1992.

⁶NRS Chapter 533.

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁷

- 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 Application 44042 was erroneously denied. Deeds filed with the Division of Water Resources revealed that Ronald M. Florance is successor in interest to Bell Brand Ranches, Inc. and a current range user.

IV.

The State Engineer concludes that if, in fact, this source of water meets the criteria of a Public Water Reserve, it shall be recognized as such and any permit granted would be subject to the prior reserved right. Conversely, if the source does not qualify for reserved status, any permits granted on the source would only be later in priority to any other vested rights that may exist. Only after a general adjudication of all rights would there be a determination made of the extent of any other vested claims and the validity of any claimed or unclaimed reserved rights.

V.

The State Engineer determines that the source is not tributary to the Salmon River Decreed system, that there is unappropriated water at the source and the granting of a permit will not conflict with existing rights nor prove detrimental to the public interest.

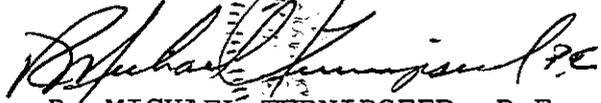
⁷ NRS Chapter 533.370.

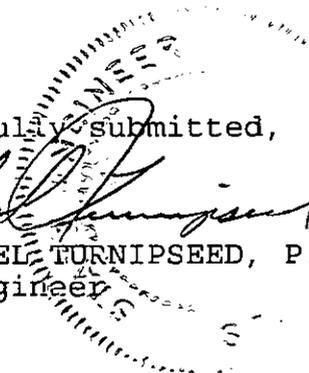
RULING

The denial of Application 44042 is herewith reversed and Application 44042 is reinstated to ready for action status. The protest to Application 44042 is hereby overruled and said application is hereby approved subject to:

1. Payment of the statutory permit fees.
2. To 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.

Respectfully submitted,


R. MICHAEL FURNIPSEED, P.E.
State Engineer



RMT/SW/bk

Dated this 30th day of
June, 1993.