

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

IN THE MATTER OF APPLICATION NUMBER)
45382 FILED TO APPROPRIATE THE WATER)
FROM MARTIN DEAN SPRING LOCATED WITHIN)
HOT CREEK VALLEY (156), NYE COUNTY,)
NEVADA.)

RULING

4353

GENERAL

I.

Application 45382 was filed on February 23, 1982, by Joe B. Fallini, Jr., Helen L. Fallini and Susan L. Fallini to appropriate 0.032 cubic feet per second (cfs) of water from Martin Dean Spring for stockwatering of 1,000 head of cattle and 25 horses for use within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13, T.5N., R.49E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13, T.5N., R.49E., M.D.B.&M.¹

II.

A protest was filed by the United States Bureau of Land Management on July 20, 1982, on the following grounds:

Water is necessary for the multiple use management of the public lands. The water is not available for appropriation under state law because it is a public water reserve. The lands contained in the public water reserve were withdrawn by Executive Order 107 of April 17, 1926.

However, the protest was not timely filed as the statutory time frame for filing a protest had closed on July 17, 1982.^{1,2}

III.

Claim of Public Water Reserve (No. R-06130) was filed on November 3, 1993, by U.S.D.I. Bureau of Land Management, claiming a priority date of April 17, 1926, for 0.01 cfs from Martin Dean Spring for livestock and domestic purposes for use within the NE $\frac{1}{4}$

¹ File No. 45382, official records in the Office of the State Engineer.

² NRS 533.365(1).

NE¼ Section 14, T.5N., R.49E., M.D.B.&M. The point of diversion is described as being located within the NE¼ NE¼ Section 14, T.5N., R.49E., M.D.B.&M.³

IV.

Proof of Appropriation No. 03766 was filed on February 23, 1982, by Joe B. Fallini, Jr., Helen L. Fallini, and Susan L. Fallini claiming a priority date of 1870 for 0.032 cfs from Martin Dean Spring for watering 1,000 head of cattle and 25 horses for use within the NE¼ Section 21, T.5N., R.49E., M.D.B.&M. The point of diversion is described as being located within the NE¼ Section 21, T.5N., R.49E., M.D.B.&M.⁴

FINDINGS OF FACT

I.

The locations described in Application 45382, Proof of Appropriation No. 03766 and Claim of Public Water Reserve No. R-06130 are different, but the difference in the location descriptions can be explained by the fact that this area is unsurveyed. The State Engineer finds that the source of water, Martin Dean Spring, is the same source of water under all of these filings.

II.

The protest by the United States Bureau of Land Management was not timely filed in the Office of the State Engineer. However, the State Engineer finds that the basis of the Bureau of Land Management's protest, a public water reserve, has been extensively and fully considered and ruled upon in prior proceedings.⁵ Based on State Engineer's Ruling No. 3219, the State Engineer finds that

³ Proof File No. 06130, official records in the Office of the State Engineer.

⁴ Proof File No. 03766, official records in the Office of the State Engineer.

⁵ State Engineer's Ruling No. 3219, dated July 26, 1985, official records in the Office of the State Engineer.

a Public Water Reserve 107 water right is a federal reserved water right with a priority date of April 17, 1926; that the purposes for which water was reserved under PWR 107 are limited to domestic and stockwatering uses in a quantity necessary to accomplish the purposes of the reservation; that a PWR 107 water right does not reserve water for wildlife; that a PWR 107 water right is subject to any valid existing rights as of April 17, 1926; and that a PWR 107 water right claim does not operate on sources of water under a minimum threshold.

III.

Resulting from field investigations⁶ conducted by staff of the Office of the State Engineer, the State Engineer finds that Martin Dean Spring lacks any appreciable flow and does not meet the minimum threshold for a PWR 107 claim.

IV.

The State Engineer finds that the Legislature has declared livestock watering on the public domain to be a beneficial use,⁷ and that before a person may obtain a right to use water from a spring or water which has seeped to the surface of the ground, he must ensure that wildlife which customarily use the water will have access to it.⁸

V.

The State Engineer finds that no general adjudication of pre-statutory or reserved water rights under the provisions of NRS 533.090-533.320 has been concluded with regard to the waters at issue in this matter.

⁶ Report of Field Investigation No. 965, dated December 1, 1995, official records in the Office of the State Engineer.

⁷ NRS 533.485-533.510.

⁸ NRS 533.367.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action.⁹

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:¹⁰

- 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 pursuant to a formal adjudication, in fact, these sources of water meet 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 source does not qualify for Public Water Reserve status, any permits granted on the source would only be later in priority to any other vested rights that may exist on the source. 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.

IV.

The State Engineer concludes that the source is not tributary to any other surface water source.

⁹ NRS Chapter 533.

¹⁰ NRS 533.370.

v.

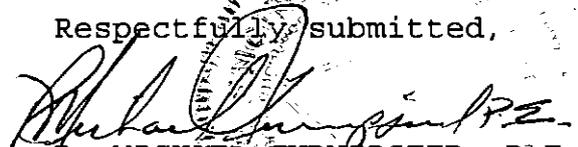
The State Engineer concludes that the issuance of a permit under Application 45382 would not adversely affect water use by livestock under Proof No. 03677 Water Reserve No. R-06130.

RULING

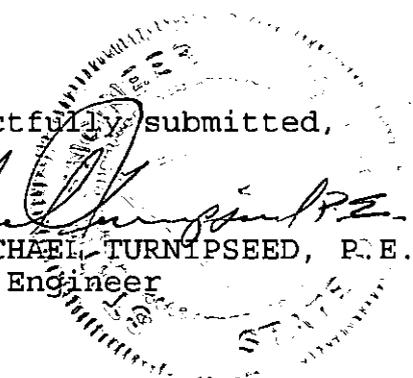
Application 45382 is approved subject to the following:

1. Payment of the statutory permit fees.
2. Prior reserved rights of the United States, if in fact these rights exist, and the source meets the proper criteria.
3. If valid, the vested water right claimed under Proof of Appropriation Number 03766.
4. Ensuring that wildlife which customarily use the water will have access.
5. All other existing rights.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer



RMT/SW/ab

Dated this 16th day of
May, 1996.