

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

IN THE MATTER OF APPLICATIONS)
28841, 28842, 28843, 28844, 28845,)
28846, 28847, 28848, 28850, 28851,)
28852, 28853, 29107, 29108, 29109,)
29110, 29111, 29112, 29113 AND 29114)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF VARIOUS SPRINGS WITHIN THE)
SPRING VALLEY GROUNDWATER BASIN (184),)
WHITE PINE COUNTY, NEVADA.)

RULING

4518

GENERAL

I.

Applications 28841 through 28848, inclusive, and 28850 through 28853, inclusive, were filed on October 29, 1974, and Applications 29107 through 29114, inclusive, were filed on December 27, 1974, by Richard M. Swallow to appropriate surface water for irrigation and domestic purposes from the following described sources in the amounts indicated:

Application 28841 - Raised Spring (aka Ray Spring), to be diverted within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20, T.13N., R.68E., M.D.B.&M., in the amount of 2.5 c.f.s.;

Application 28842 - Meadow Spring No. 1, to be diverted within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 31, T.13N., R.68E., M.D.B.&M., in the amount of 1.0 c.f.s.;

Application 28843 - Meadow Spring No. 2 to be diverted within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 30, T.13N., R.68E., M.D.B.&M., in the amount of 1.0 c.f.s.;

Application 28844 - Poplar Spring, to be diverted within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 36, T.13N. R.67E., M.D.B.&M., in the amount of 1.0 c.f.s.;

Application 28845 - Meadow Springs No. 3, to be diverted within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 31, T.13N., R.68E., M.D.B.&M., in the amount of 1.0 c.f.s.;

Application 28846 - Arroyo Spring, to be diverted within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, T.13N., R.67E., M.D.B.&M., in the amount of 1.0 c.f.s.;

Application 28847 - Lower Meadow Seeps, to be diverted within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, T.13N., R.67E., M.D.B.&M., in the amount of 0.5 c.f.s.;

Application 28848 - Cedar Seeps, to be diverted within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 36, T.13N., R.67E., M.D.B.&M., in the amount of 0.5 c.f.s.;

Application 28850 - Squaw Berry Spring No. 3, to be diverted within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 30, T.13N., R.68E., M.D.B.&M., in the amount of 1.0 c.f.s.;

Application 28851 - Squaw Berry Spring No. 2, to be diverted within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 30, T.13N., R.68E., M.D.B.&M., in the amount of 1.5 c.f.s.;

Application 28852 - Squaw Berry Spring No. 1 to be diverted within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 30, T.13N., R.68E., M.D.B.&M., in the amount of 1.0 c.f.s.;

Application 28853 - Rose Bush Spring, to be diverted within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20, T.13N., R.68E., M.D.B.&M., in the amount of 1.25 c.f.s.;

Application 29107 - Lower Meadow Seeps No. 4, to be diverted within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, T.13N., R.67E., M.D.B.&M., in the amount of 0.5 c.f.s.;

Application 29108 - Lower Meadow Seeps No. 6 to be diverted within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, T.13N., R.67E., M.D.B.&M., in the amount of 0.5 c.f.s.;

Application 29109 - Lower Meadow Seeps No. 3, to be diverted within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, T.13N., R.67E., M.D.B.&M., in the amount of 0.5 c.f.s.;

Application 29110 - Lower Meadow Seeps No. 2, to be diverted within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, T.13N., R.67E., M.D.B.&M., in the amount of 1.5 c.f.s.;

Application 29111 - Middle Fork Hub Basin Spring, to be diverted within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 29, T.13N., R.68E., M.D.B.&M., in the amount of 1.0 c.f.s.;

Application 29112 - South Hub Basin, to be diverted within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 29, T.13N., R.68E., M.D.B.&M., in the amount of 1.0 c.f.s.;

Application 29113 - North Hub Basin, to be diverted within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 28, T.13N., R.68E., M.D.B.&M., in the amount of 1.0 c.f.s.;

Application 29114 - Lower Meadow Seeps No. 7 to be diverted within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 26, T.13N., R.67E., M.D.B.&M., in the amount of 0.5 c.f.s.;

All of the above listed applications request an appropriation of water for irrigation and domestic purposes within a common place of use described as 550 acres. The use is further described as the primary source of water for 160 acres in the NE $\frac{1}{4}$ of Section 34, and as a supplemental source for 390 acres in the SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26 and N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27, all within T.13N., R.67E. M.D.B.&M.¹

II.

Protests to the granting of all of the subject applications were filed on March 3, 1975, by El Tejon Cattle Company on the grounds that "it would impair and conflict with the value of existing rights; that it would be against public policy to grant said application, and contrary to statute; that the granting of said application would interfere with the customary use of the Protestant's existing water rights," and requested that the applications be denied.¹

FINDINGS OF FACT

I.

Applications 28841 through 28848, 28850 through 28853, and 29107 through 29114 were filed during October and December of 1974,

¹File Nos. 28841, 28842, 28843, 28844, 28845, 28846, 28847, 28848, 28850, 28851, 28852, 28853, 29107, 29108, 29109, 29110, 29111, 29112, 29113 and 29114, official records in the Office of the State Engineer.

by Richard M. Swallow for the primary irrigation of 160 acres and the secondary (supplemental) irrigation of 390 acres of land. All of the springs are located on the west slope of the Snake Range in the vicinity of Wheeler Peak. The Springs range in elevation from 5900 feet above sea level to 7920 feet above sea level with the common place of use located a maximum of three miles in a westerly direction at an approximate average elevation of 5900 feet.²

The State Engineer finds that the spring flow characteristics are typical of those found at high elevations within the basin and range province with maximum flows occurring during the spring snow melt with a gradual reduction to minimal or zero flow conditions by mid-summer.

II.

The record of spring flow measurements specific to the subject springs is limited to field data collected by personnel from the Division of Water Resources during field investigations held during May 1975 ("DWR75")³, and September 25-26, 1996 ("DWR96").⁴ Additional flow measurements were collected by the applicants agent on several of the subject sources during June and July 1975 ("App. 75").⁵ An examination of the DWR75 and DWR96 data shows all of the springs with the exception of Raised Spring at minimal or zero flow conditions, with an estimate of flow at Raised Spring of approximately 100 gallons per minute. The DWR75 and DWR96 data differs significantly from the App.75 data which credits flows in excess of one cubic foot per second to several of the subject

²USGS 7.5' map, Mount Wheeler Quadrangle.

³Report of Field Investigation No. 636, dated June 20, 1975, official records in the Office of the State Engineer.

⁴Report of Field Investigation No. 969, dated March 6, 1997, official records in the Office of the State Engineer.

⁵File No. 28841, official records in the Office of the State Engineer.

springs. These variations in flow measurements may be attributed in part to uncertainty in common measuring sites. There are no supporting field notes or maps to confirm that the App.75 measurements were taken at sites similar to those from which the DWR75 and DWR96 data was collected.

The spring flow data obtained during DWR75 and DWR96 are as follows:

Spring Source	DWR75 ³	DWR96 ⁴
Raised	100 GPM*	<3 GPM
Rosebush	NM	0
Squaw Berry	0	0
Meadow	0	0
Lower Meadow	0	0
Arroyo	0	0
Cedar	0	0
Poplar	1 GPM	0
North Hub	NM	0 GPM
Middle Hub	NM	<3 GPM
Hub	NM	<4 GPM

NM = Not Measured * = gallons per minute

The State Engineer finds that the record of spring flow for all of the springs with the exception of Raised Spring indicate minimal or zero flow conditions occur during portions of the irrigation season.

III.

Application 28841 was filed to appropriate 2.5 cfs of water from Raised Spring on an annual basis. The State Engineer finds that there is insufficient water available to support the quantity requested under said application.

IV.

Applications 28841 through 28848, 28850 through 28853, and 29107 through 29114 were filed to appropriate surface water from numerous springs which are commonly reduced to minimal or zero flow

conditions during the irrigation season. The State Engineer finds that the combined water resource available for appropriation from the spring sources described under the subject applications is insufficient in its quantity and duration to represent a reliable annual source of water for the irrigation of 160 acres of primary ground, in addition to 390 acres of supplemental ground.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and of subject matter of this action and determination.⁶

II.

The State Engineer is prohibited by law from granting a permit where:⁷

- 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 State Engineer concludes that it would not be in the public interest to grant permits on sources where there is not sufficient flow to support the quantity of water requested under the subject applications.

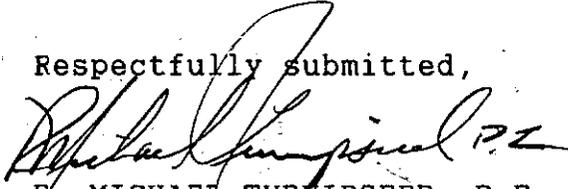
⁶NRS Chapter 533.

⁷NRS 533.370(3).

RULING

Applications 28841, 28842, 28843, 28844, 28845, 28846, 28847, 28848, 28850, 28851, 28852, 28853, 29107, 29108, 29109, 29110, 29111, 29112, 29113 and 29114 are hereby denied on the grounds that it would not be in the public interest to grant permits on sources where there is not sufficient flow to support the quantity of water requested under the applications. No ruling is made on the merits of the protests filed by El Tejon Cattle Company.

Respectfully submitted,



E. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/ab

Dated this 1st day of
April, 1997.