

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

IN THE MATTER OF APPLICATIONS)
54870 AND 54871 FILED TO)
APPROPRIATE THE PUBLIC WATERS)
FROM AN UNDERGROUND SOURCE)
AND A SURFACE SOURCE WITHIN THE)
RUBY VALLEY HYDROGRAPHIC)
BASIN (176), ELKO COUNTY, NEVADA.)

RULING

5220

GENERAL

I.

Application 54870 was filed on May 25, 1990, by Kenneth M. Marrujo or Frances M. Marrujo, to appropriate 0.1 cubic feet per second (cfs) of water from Marrujo Well No. 2, for stockwatering and domestic purposes. The place of use is within portions of Sections 1 and 2, T.32N., R.60E., portions of Sections 5 and 6, T.32N., R.61E., portions of Sections 25, 35 and 36, T.33N., R.60E., and all or portions of Sections 19, 20, 29, 32, 30 and 31, T.33N., R.61E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 31, T.33N., R.61E., M.D.B.&M.¹

II.

Application 54871 was filed on May 25, 1990, by Kenneth M. Marrujo or Frances M. Marrujo, to appropriate 0.1 cfs of water from Arizona Spring, for stockwatering and domestic purposes. The place of use is the same as Application 54870. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20, T.33N., R.61E., M.D.B.&M.²

III.

Application 54870 was timely protested by the U.S. Bureau of Land Management (BLM) on the following grounds:¹

1. The waters from this underground source are required for multiple use management of the vacant public lands which are adjacent to, adjoining, and overlaying the water source.

¹ File No. 54870, official records in the Office of the State Engineer.

² File No. 54871, official records in the Office of the State Engineer.

2. The Bureau of Land Management has either constructed the development or cooperated in the construction of the development.

IV.

Application 54871 was timely protested by the U.S. Forest Service (USFS) and the Nevada Department of Wildlife (NDOW).²

The NDOW protested on the following grounds:

Arizona Spring provides the only water for Mule Deer, Sage Grouse, Blue Grouse, Mountain Lions and numerous other terrestrial and avian nongame wildlife species within a 15 square mile area of the East Humboldt Mountain Range. The spring source is currently developed with water diverted into two livestock watering troughs, 50 and 300 feet from the source. There is currently no water at the source and any further adjudication will further diminish quantities of water needed to maintain the above listed wildlife species.

The USFS protested on the following grounds:

The United States has used this water continuously since 1901 for stockwatering purposes and has submitted a Proof of Appropriation of water for stockwatering purposes in the Ruby Valley Adjudication (identified as Arizona Spring No. 2, Map No. 133) the spring is a critical source of water for wildlife, and there is no excess water at the source.

FINDINGS OF FACT

I.

Nevada Revised Statutes § 533.365 (3) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to appropriate the public waters of the State of Nevada. The State Engineer finds that a hearing is not necessary to consider the merits of the protests filed by the BLM, USFS, and NDOW.

II.

Under the provisions of NRS § 533.503, the State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock upon the public land unless the applicant for the permit is legally entitled to place livestock on the public lands for which the permit is sought.³ By correspondence date stamped September 26, 1990,

³ NRS § 533.503(1).

the BLM informed the State Engineer that regarding Applications 54870 and 54871, the range permittee is Kenneth M. Marrujo or Frances M. Marrujo. The Elko field office of the BLM confirmed this information by telephone on December 20, 2002. Furthermore, the Elko office added that the federal grazing allotment is Ruby #3 which is permitted for 333 cows from April 16 to June 15 and the permit is for ten years being from 1994 to 2004. The State Engineer finds that the applicant is entitled by the proper federal agency to place livestock upon the public range that is serviced by the well and spring source described under Applications 54870 and 54871.

III.

Application 54870 was filed to appropriate underground water from an existing well located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 31, T.33N., R.61E., M.D.B.&M.¹ The State Engineer finds that a determination was made through an examination of the records in the Office of the State Engineer that with the exception of Application 54870, there are no additional permitted, vested or reserved water right filings appurtenant to this well.⁴ The State Engineer further finds that any permit granted on this source would, as a condition of its approval, be subject to any vested or prior water rights that have yet to be determined for the historic use of the well.

IV.

Application 54870 was protested in part by the BLM on the grounds that the waters from this underground source are required for multiple use management of the vacant public lands, which are adjacent to, adjoining, and overlying the water source. Since the BLM issued a permit for livestock grazing on these lands, multiple use management of these waters must include stockwatering purposes. The State Engineer finds that the approval of Application 54870 would not deter the multiple use management of the land since the application is for stock watering purposes.

V.

Application 54870 was protested in part on the grounds that the BLM has either constructed the development or cooperated in the construction of the development.

⁴ Nevada Division of Water Resources Database, Basin 176, official records in the Office of the State Engineer.

While the BLM may have constructed the development or cooperated in the construction of the development the State Engineer finds that there is no requirement within the Nevada Revised Statutes or the policies established by the State Engineer's Office to deny an application for stockwatering purposes on those grounds.

A review of records in the Office of the State Engineer indicates that no Well Driller's Report has ever been filed for the subject well as required under NRS 534 § 170. Since there is no Well Driller's Report, the State Engineer finds there is no valid evidence in the Office of the State Engineer regarding what party drilled the well and under what authority the well was drilled. The State Engineer further finds that without a Well Driller's Report on file, the grounds of the protest are without merit.

VI.

A permit to appropriate water is required before sinking a well in a designated groundwater basin.⁵ A well may be sunk or bored in a non-designated basin without the benefit of a permit, but water may not be diverted for any use without the appropriator obtaining a permit pursuant to Nevada Water Law.⁶ The State Engineer designated the Ruby Valley Hydrographic Basin on July 18, 1985, under State Engineer's Order No. 871. The State Engineer finds that while the BLM may have drilled the well, legally or illegally, no water right permits currently exist at the well; therefore the approval of Application 54870 would not impair any existing rights.

VII.

Application 54871 was filed to appropriate water from Arizona Spring located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T.33N., R.61E., M.D.B.&M. or at a point from which the SW Corner of Section 31, T.33N., R.61E., M.D.B.&M. bears S. 25°19'00" W., at 14,760 feet.² This described point of diversion, when plotted, is within 200 feet of the location of Arizona Spring as depicted on the USGS 7.5 Minute "Arizona Spring" Quad Map. The State Engineer finds that Application 54871 is for water from the Arizona Spring shown on the USGS 7.5 Minute "Arizona Spring" Quad Map.

⁵ NRS § 534.050.

⁶ NRS § 534.050 (3).

VIII.

Application 54871 was protested by the USFS on the grounds that "The United States has used this water continuously since 1901 for stockwatering purposes and has submitted a Proof of Appropriation of water for stockwatering purposes in the Ruby Valley Adjudication (identified as Arizona Spring No. 2, Map No. 133) the spring is a crucial source of water for wildlife, and there is no excess water at the source." A determination was made through an examination of the records in the Office of the State Engineer that Proofs of Appropriation of Water for Stock Watering or Wildlife Purposes (Proofs) were filed by the USFS under File Nos. V-07110 and V-07111 for Arizona Spring and Arizona Spring #2, respectively. The USFS Map No. 133, filed in support of Proof No. V-07110, specifies the location of Arizona Spring as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20, T.33N., R.61E., M.D.B.&M. or at a point from which the SW Corner of said Section 20 bears S. 15°57' W. a distance of 730 feet. The USFS Map No. 133, filed in support of Proof No. V-07111, specifies the location of Arizona Spring #2 as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20, T.33N., R.61E., M.D.B.&M. or at a point from which the SW Corner of said Section 20 bears S. 14°56' W. a distance of 1,550 feet. Based on the information submitted by the USFS under the subject Proofs and their supporting map, the described points of diversion under Proof Nos. V-07110 and V-07111 are approximately 1,500 feet and 2,300 feet, respectively, distant, from the location of Arizona Spring as depicted on the USGS 7.5 Minute "Arizona Spring" Quad Map. In addition, USFS Map No. 133 shows the Proofs' locations to be in a different drainage channel. The State Engineer finds that the locations of the two springs described under Proofs V-07110 and V-07111 are substantially different from the location of the spring described under Application 54871 and depicted on the USGS 7.5 Minute "Arizona Spring" Quad Map. The State Engineer finds that the springs described under Proofs V-07110 and V-07111 and Application 54871 are different sources of water. The State Engineer finds that a determination was made through an examination of the records in the Office of the State Engineer that with the exception of Application 54871, there are no additional permitted, vested or reserved water right filings

appurtenant to the genuine Arizona Spring. The State Engineer further finds that any permit granted on this source would, as a condition of its approval, be subject to any vested or prior water rights that have yet to be determined under the Ruby Valley adjudication for the historic use of Arizona Spring.

IX.

Application 54871 was protested by NDOW on the grounds that water from Arizona Spring is required by wildlife and there is no water at the source. Nevada Water Law requires that sufficient water must be retained at the spring under NRS § 533.367 to support a customary use of the water for wildlife. The State Engineer finds that sufficient protection exists for wildlife use of the spring under NRS § 533.367 to properly guard the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.⁷

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁸

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

III.

The State Engineer concludes there is unappropriated water at the sources.

IV.

The State Engineer concludes there are no additional permitted, vested, or reserved water right filings appurtenant to Marrujo Well No. 2; therefore, approval of Application 54870 would not conflict with existing rights.

⁷ NRS chapter 533.

⁸ NRS § 533.370 (3).

V.

The State Engineer concludes that USFS Proofs V-07110 and V-07111 are for different springs than the Arizona Spring applied for under Application 54871 and any future vested claims for Arizona Spring must be determined through the pending Ruby Valley adjudication. The State Engineer further concludes there are no additional permitted, vested, or reserved water right filings appurtenant to Arizona Spring; therefore, the approval of Application 54871 would not conflict with existing rights.

VI.

The State Engineer concludes that stockwatering is a beneficial use and that the applicants are the current range user of the grazing allotment; therefore, the approval of Applications 54870 and 54871 would not threaten to prove detrimental to the public interest.

VII.

Only after a general adjudication of all water 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. The State Engineer concludes that any permit granted on Marrujo Well No.2 (Application 54870) and Arizona Spring (Application 54871) would be subject to any vested or prior water rights that have yet to be determined and would be later in priority to any other vested rights that may or may not exist.

VIII.

The statutory requirements mandated under NRS § 533.367 assure that the granting of new appropriations of water from spring sources will not interfere with the customary use of the water by wildlife. The State Engineer concludes that any permit approved under Application 54871 would be issued in accordance with NRS § 533.367 thereby allowing sufficient water to be retained at the source for wildlife.

RULING

The protests to Application 54870 and 54871 are hereby overruled and said applications are hereby approved subject to the following conditions:

1. Payment of the statutory permit fees.

2. Ensuring that wildlife, which customarily uses the water, will have access as set forth under NRS § 533.367.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 19th day of
February, 2003.