

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

IN THE MATTER OF APPLICATIONS)
55350, 55428, AND 55624 FILED TO)
APPROPRIATE THE PUBLIC WATERS)
OF SURFACE AND UNDERGROUND)
SOURCES WITHIN THE RAILROAD)
VALLEY HYDROGRAPHIC BASIN)
(173A), NYE COUNTY, NEVADA.)

RULING

#5852

GENERAL

I.

Application 55350 was filed on October 8, 1990, by Joe B. Fallini, Jr. and Susan L. Fallini to appropriate 0.1 cubic feet per second (cfs) of surface water from Squaw Spring in the Railroad Valley Hydrographic Basin for recreation and domestic purposes on 40 acres of land described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, T.2S., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, T.2S., R.54E., M.D.B.&M.¹

II.

Application 55428 was filed on November 1, 1990, by Joe B. Fallini, Jr. and Susan L. Fallini to appropriate 0.032 cfs of underground water from the Hyde Shaft well in the Railroad Valley Hydrographic Basin for recreation and domestic purposes on 40 acres of land described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, T.3N., R.51 $\frac{1}{2}$ E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, T.3N., R.51 $\frac{1}{2}$ E., M.D.B.&M.²

III.

Application 55624 was filed on January 11, 1991, by Joe B. Fallini, Jr. and Susan L. Fallini to appropriate 0.1 cfs of surface water from the East Side Spring in the Railroad Valley Hydrographic Basin for recreation and domestic purposes on 80 acres of land that are described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17, T.1N.,

¹ File No. 55350, official records in the Office of the State Engineer.

² File No. 55428, official records in the Office of the State Engineer.

R.54E., M.D.B.&M., and SE¼ SE¼ of Section 13; T.1N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ SE¼ of Section 17, T.1N., R.54E., M.D.B.&M.³

IV.

Applications 55350, 55428 and 55624 were all timely protested by the United States Department of the Interior, National Park Service on the grounds not to be considered in this ruling.

V.

Application 55624 was timely protested by the United States Department of the Interior, Bureau of Land Management on the following grounds:³

1. The applicant is unable to show beneficial use, as required by NRS §§ 533.030(1), 533.035 and 533.045, of the water applied for because the applicant has no possessory interest in the public lands constituting the origin or place of use of the water or authority to use those lands for recreational purposes.
2. Nevada State law does not recognize an appropriation of water on public lands for private recreational uses. The authority to appropriate water on public lands for recreational purposes is limited to public agency appropriators who seek to appropriate water for public recreational purposes. Nevada v. Morros, 766 P.2d 263 (Nev. 1988).
3. The applicant should be denied under NRS § 533.045 because the applicant cannot demonstrate any necessity for the use of water. The applicant has no interest in or authority to use for public recreational purposes the public lands on which the water is to be appropriated or on which the water is to be used.
4. The application should be denied pursuant to NRS § 533.372 as against the public interest and economic welfare of the State of Nevada in that the applicant, through this application and numerous others, seeks to monopolize the majority of spring sources in this area for private recreation purposes and thereby eliminate multiple use of the public lands as mandated by the Federal Land

³ File No. 55624, official records in the Office of the State Engineer.

Management and Policy Act for the benefit of all of the public and the varied natural resources located thereon.

FINDINGS OF FACT

I.

Nevada Revised Statute § 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 in the case of protested Applications 55350, 55428 and 55624 there is sufficient information contained within the records of the Office of the State Engineer to gain a full understanding of the issues and a hearing on this matter is not required.

II.

A review of existing water right records in the Office of the State Engineer reveals that the Fallini's are the authorized range user for grazing for the public lands described under the place of use for Applications 55350, 55428, and 55624; and currently have certificated (45384-Squaw Well- underground, 46198-East Side Spring), vested (V03762-East Side Spring, V03764 East Side Spring, V07369, Squaw Spring) or applications pending (55429- Hyde Shaft Well-underground) for stockwatering purposes on all the points of diversion under Applications 55350, 55428, and 55624. These water rights are all for 1,000 cattle and 25 horses. Only Squaw Spring has another water right claim by anyone else; the Bureau of Land Management, R-06099. The State Engineer finds that the Fallini's already have existing water rights on all proposed points of diversion under Applications 55350, 55428, and 55624.

III.

On July 22, 2005, the Applicant was requested to provide additional information regarding the proposed recreation and domestic use so that an appropriate duty could be determined. The Applicants' response, dated August 8, 2005, merely indicated that the "purposes include but are not limited to horseback riding, hiking/backpacking, camping, recreational hunting, photographing, birding, rock hounding, recreational botanical/zoological study, and general sight seeing. The State

Engineer finds other than as a member of the general public the Applicant has not been granted control over the public lands to conduct such activities, and therefore, to grant a permit would threaten to prove detrimental to the public interest.

IV.

A further review of records in the Office of the State Engineer reveals that this is not the first time Joe B. Fallini, Jr. and Susan L. Fallini have filed to appropriate public waters for recreation and domestic use on public lands. Applications 53528 and 53534, which are nearly identical to Applications 55624 and 55350, respectively, were denied by State Engineers Ruling No. 4520⁴ on April 17, 1997. The State Engineer finds Applications 55350, 55428, and 55624 are materially similar enough to Applications 53528 and 53534 to make them subject to the Finding of Facts and the Conclusions of Law of State Engineers Ruling No. 4520 and, the approval of these applications would conflict with a previous ruling and threaten to prove detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and subject matter of this action and determination.⁵

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁶

- 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.

⁴ See, State Engineers Ruling No.4520, official records in the Office of the State Engineer.

⁵ NRS chapters 533 and 534.

⁶ NRS § 533.370(5).

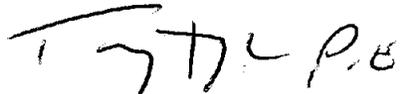
III.

The State Engineer concludes that because Applications 55350, 55428, and 55624 are materially similar to applications previously denied by State Engineers Ruling No. 4520 the granting of these applications would conflict with previous rulings and additionally would threaten to prove detrimental to the public interest.

RULING

Applications 55350, 55428, and 55624 are hereby denied on the grounds that the approval of these Applications would threaten to prove detrimental to the public interest. No ruling is made on the merits of the National Park Service's protest. The protest of the Bureau of Land Management is upheld in part on the grounds that the Applicant has no possessory interest in the public lands for recreational purposes.

Respectfully submitted,



Tracy Taylor, P.E.
State Engineer

TT/WHR/jm

Dated this 16th day of
May, 2008