

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

IN THE MATTER OF APPLICATIONS)
43978, 43980, 43981 AND 43982 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF)
ROBINSON CANYON SPRINGS, HALL)
RANCH SPRING, TAYLOR CREEK SPRING)
AND COLD SPRING, RESPECTIVELY,)
WITHIN THE BRUNEAU RIVER AREA)
HYDROGRAPHIC BASIN (38), ELKO)
COUNTY, NEVADA.)

RULING
#6225

GENERAL

I.

Application 43978 was filed on June 29, 1981, by the Howard Ranches, later assigned to Simplot Livestock Company, to appropriate 0.10 cubic feet per second (cfs) of water from Robinson Canyon Springs for stock water and domestic purposes within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35, T.47N., R.55E., M.D.B.&M., and the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 1, T.46N., R.55E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 35.¹

II.

Application 43980 was filed on June 29, 1981, by the Howard Ranches, later assigned to Simplot Livestock Company, to appropriate 0.10 cfs of water from Hall Ranch Spring for stock water and domestic purposes within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T.46N., R.55E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 12.²

III.

Application 43981 was filed on June 29, 1981, by the Howard Ranches, later assigned to Simplot Livestock Company, to appropriate 0.10 cfs of water from Taylor Creek Spring for stock water and domestic purposes within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, T.46N., R.55E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 2.³

IV.

Application 43982 was filed June 29, 1981, by the Howard Ranches, later assigned to Simplot Livestock Company, to appropriate 0.10 cfs of water from Cold Spring for stock water and domestic

¹ File No. 43978, official records in the Office of the State Engineer.

² File No. 43980, official records in the Office of the State Engineer.

³ File No. 43981, official records in the Office of the State Engineer.

purposes within the SW¼ SE¼ of Section 10, T.46N., R.55E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ SE¼ of said Section 10.⁴

V.

Applications 43978, 43980, 43981 and 43982 were timely protested by the U.S. Department of Agriculture, Forest Service (USFS) on the following grounds:^{1,2,3,4}

For Application 43978: The Forest Service has a prior right (Proof 03720) and has developed this spring to its full extent. There is no water available to fulfill a second right. There is no need for additional stock water developments to serve this area, nor will any be permitted.

For Application 43980: The Forest Service has a prior right (Proof 03731) and has developed this spring to its full extent. There is no water available to fulfill a second right. There is no need for additional stock water developments to serve this area, nor will any be permitted.

For Application 43981: The Forest Service has a prior right (Proof 03730) and has developed this spring to its full extent. There is no water available to fulfill a second right. There is no need for additional stock water developments to serve this area, nor will any be permitted.

For Application 43982: The Forest Service has a prior right (Proof 03735) and has developed this spring to its full extent. There is no water available to fulfill a second right. There is no need for additional stock water developments to serve this area, nor will any be permitted.

VI.

Proof of Appropriation No. 03720 (Proof No. 03720) was filed on January 11, 1982, by the USFS claiming pre-statutory vested water right with a priority date of 1872 to use 0.015 cfs of water from Robinson Creek Spring for stock-watering purposes for up to 750 cattle and 50 deer and a season of use from April 1 through December 31. The point of diversion is described as being located within the SW¼ NW¼ of Section 35, T.47N., R.55E., M.D.B.&M.⁵

VII.

Additionally, the USFS also filed Proof of Appropriation No. 08354 (Proof No. 08354) on June 15, 1995, by the USFS claiming pre-statutory vested water right with a priority date of 1884 to use 0.020 cfs of water from West Robinson Spring for stock-watering purposes for up to 750 cattle and a

⁴ File No. 43982, official records in the Office of the State Engineer.

⁵ Proof No. 03720, official records in the Office of the State Engineer.

season of use from April 1 through November 30. The point of diversion is described as being located within the SW¼ NW¼ of Section 35, T.47N., R.55E., M.D.B.&M.⁶

VIII.

Proof of Appropriation No. 03731 (Proof No. 03731) was filed on January 11, 1982, by the USFS claiming pre-statutory vested water right with a priority date of 1872 to use 0.015 cfs of water from Hall Ranch Spring for stock-watering purposes for up to 750 cattle and 50 deer and a season of use from April 1 through December 31. The point of diversion is described as being located within the SE¼ NE¼ of Section 12, T.46N., R.55E., M.D.B.&M.⁷

IX.

Proof of Appropriation No. 03730 (Proof No. 03730) was filed on January 11, 1982, by the USFS claiming pre-statutory vested water right with a priority date of 1872 to use 0.015 cfs of water from Taylor Creek Spring for stock-watering purposes for up to 750 cattle and 50 deer and a season of use from April 1 through December 31. The point of diversion is described as being located within the SW¼ SE¼ of Section 2, T.46N., R.55E., M.D.B.&M.⁸

X.

Proof of Appropriation No. 03735 (Proof No. 03735) was filed on January 11, 1982, by the USFS claiming pre-statutory vested water right with a priority date of 1872 to use 0.015 cfs of water from Cold Spring for stock-watering purposes for up to 750 cattle and 50 deer and a season of use from April 1 through December 31. The point of diversion is described as being located within the SW¼ SE¼ of Section 10, T.46N., R.55E., M.D.B.&M.⁹

FINDINGS OF FACT

I.

Nevada Revised Statutes § 533.365(4) 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 sufficient evidence is available in the Office of the State Engineer to evaluate the merits of Applications 43978, 43980, 43981 and 43982 and that a hearing is not necessary.

⁶ Proof No. 08354, official records in the Office of the State Engineer.

⁷ Proof No. 03731, official records in the Office of the State Engineer.

⁸ Proof No. 03730, official records in the Office of the State Engineer.

⁹ Proof No. 03735, official records in the Office of the State Engineer.

II.

On January 20, 2013, the Division of Water Resources (Division) requested that the USFS provide information as to the permittee; current range users if different than the permittee; name of the range allotment, number and kind of animals and period of use for the proposed place of use under Applications 43978, 43980, 43981 and 43982. By letter received March 25, 2013, the USFS indicated that the Applicant has a grazing permit on the McDonald Creek allotment. Though the letter indicates that the Applicant holds the grazing permit, the USFS maintains that the waters of the springs are fully appropriated as indicated by USFS Proofs 03720, 03731, 03730 and 03735; thus no additional water is available for appropriation. The USFS also argues that the Applicant would be unable to prove beneficial use under Applications 43978, 43980, 43981 and 43982, as it will not permit additional development at the sources. The State Engineer finds that the Applicant holds a grazing permit from the USFS for the area proposed by Applications 43978, 43980, 43981 and 43982.

III.

On November 20, 2008, Division personnel conducted field investigations of Robinson Creek Spring, Hall Ranch Spring, Taylor Creek Spring, and Cold Spring.

Robinson Creek Spring, Application 43978 requests 0.1 cfs and a total appropriation of water sufficient to water 500 cattle. Evidence of use by wildlife and cattle was found at this spring. They also noted that the point of diversion under Proof No. 03720 and Application 43978 are probably the same source.¹ A rate of 1 gallon per minute (gpm) or 1,440 gallons per day for a 92-day grazing season at 20 gallons per cow would be sufficient to water 72 cows or approximately 0.41 acre-feet seasonally.

Hall Ranch Spring, Application 43980 requests 0.1 cfs and a total appropriation of water sufficient to water 200 cattle. Evidence of use by wildlife and cattle was found at this spring. They also noted that the point of diversion under Proof No. 03731 and Application 43980 are probably the same source.² A rate of 2 gallons per minute (gpm) or 2,880 gallons per day for a 92-day grazing season at 20 gallons per cow would be sufficient to water 144 cows or approximately 0.81 acre-feet seasonally.

Taylor Creek Spring, Application 43981 requests 0.1 cfs and a total appropriation of water sufficient to water 200 cattle. Evidence of use by wildlife and cattle was found at this spring. They also noted that the point of diversion under Proof No. 03730 and Application 43981 are probably the same source.³ A rate of 0.2 gallons per minute (gpm) or 288 gallons per day for a 92-day grazing season at 20 gallons per cow would be sufficient to water 14 cows or approximately 0.0813 acre-feet seasonally.

Cold Spring, Application 43982 requests 0.1 cfs and a total appropriation of water sufficient to water 200 cattle. Evidence of use by wildlife and cattle was found at this spring. They also noted that the point of diversion under Proof No. 03735 and Application 43982 are probably the same source.⁴ A rate of 0.8 gallons per minute (gpm) or 1,152 gallons per day for a 92-day grazing season at 20 gallons per cow would be sufficient to water 58 cows or approximately 0.325 acre-feet seasonally.

IV.

The standard duty of water for cattle is 20 gallons per day per head. The grazing allotment allows for up to 450 cow/calf pairs for a maximum time period of June 20 through September 19 of each year. The State Engineer finds that the quantity of water requested under Applications 43978, 43980, 43981 and 43982 is minimal and there is water at the respective sources. The State Engineer finds that other than the undetermined claims of pre-statutory vested water rights for stock water purposes there are no other permitted water rights on the source, there is unappropriated water at the source and use of water will not interfere with existing rights; thus, the use of the water will not threaten to prove detrimental to the public interest.

V.

In Nevada, Proofs of Appropriation remain undetermined claims until validity is determined through an adjudication proceeding.¹⁰ The USFS pre-statutory vested water rights to the use of the water from Robinson Creek Spring, Hall Ranch Spring, and Taylor Creek Spring have not been adjudicated. The State Engineer finds the Applicant has grazing rights in the surrounding area. The proposed points of diversions and a permit for stock water purposes may be considered; however, the State Engineer questions the inclusion of domestic use on these sources. If a formal adjudication finds the USFS claim of pre-statutory vested water rights to be valid, any permits issued under Applications 43978, 43980, 43981 and 43982 would be subject and junior in priority to those existing rights.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹¹

¹⁰ NRS Chapter 533.

¹¹ NRS Chapters 533 and 534.

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:¹²

- 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 protectable 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.

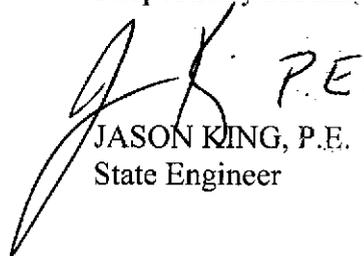
III.

The State Engineer recognizes that subject to a formal adjudication the Protestant's claim that senior vested rights may exist at the source are as yet undetermined and concludes that formal adjudication proceedings will be necessary for a final determination of the claim of vested rights. The State Engineer concludes that granting Applications 43978, 43980, 43981 and 43982 for the minimal amount of water requested and before a final determination of pending existing rights is made through the adjudication process, does not threaten to prove detrimental to the public interest.

RULING

The protests are overruled and Applications 43978, 43980, 43981 and 43982 are hereby approved for stock water purposes on the grounds that their approval would not conflict with existing rights and not prove detrimental to the public interest. No water right is being granted for domestic purposes as there is no evidence of any proposed actual domestic use.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 26th day of
April, 2013.

¹² NRS § 533.370(2).