

IN THE MATTER OF APPLICATION 40178)
FILED BY FREEPORT GOLD COMPANY ON)
DECEMBER 28, 1979, FOR PERMISSION)
TO APPROPRIATE WATER FROM DEADMANS)
SPRING IN ELKO COUNTY, NEVADA)

R U L I N G

GENERAL

Application 40178 was filed by Freeport Gold Company on December 28, 1979, for permission to appropriate 0.25 c.f.s. of water from Deadman Spring for mining, milling, and domestic purposes. The point of diversion is located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 26, T.41N., R.53E., M.D.B. & M. The place of use is located within the E $\frac{1}{2}$ SE $\frac{1}{4}$ Section 26, and W $\frac{1}{2}$ SW $\frac{1}{4}$ Section 25, T.41N., R.53E., M.D.B. & M., and the period of use will be from January 1 to December 31 of each year.

Application 40178 was timely protested on May 6, 1980, by the United States of America, Forest Service, on the following grounds: "Water has been used for stockwatering purposes since 1872. This spring is in the Foreman Creek Cattle and Horse Allotment where 700 cattle are permitted from June 16 through September 15. The permittees are Moiso, O'Neill, and Avery. We do not feel it is in the interest of the permittees to allow diversion and use of Deadman Spring for mining and milling purposes unless onsite needs can be fully met."

EXISTING RIGHTS

Proof of Appropriation 03330 was filed on May 6, 1980, by the United States of America, Forest Service, claiming a vested right for the appropriation of 0.1 c.f.s. of water for stockwatering purposes, or sufficient to water 700 head of cattle from May to November of each year. The works of diversion are located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 26, T.41N., R.53E., M.D.B. & M. The works of diversion are described as hand dug basin and the cattle drink directly from the basin. The proof also states the lands were withdrawn from the public domain on November 4, 1905, and included in the Independence Forest Reserve (Humboldt National Forest) by presidential proclamation on November 5, 1906.

A field investigation in the matter of Application 40178 was held on July 15, 1980.

CONCLUSION

Under NRS 533.370(1), the State Engineer is required to approve all applications made in proper form where all fees, as provided in this chapter, have been paid which contemplate the application of water to beneficial use, and where the proposed use or change does not tend to impair the value of existing rights, or to be otherwise detrimental to the public welfare.

Ample provision is to be made by the applicant to provide facilities for stockwatering and wildlife purposes; therefore the proposed appropriation will not be detrimental to existing rights.

RULING

The protest to Application 40178 is overruled and a permit will be issued under Application 40178 subject to existing rights upon payment of the statutorily required permit fees.

Respectfully submitted,



William J. Newman
State Engineer

WJN/JCP/gk

Dated this 25th day
of SEPTEMBER, 1980.