

IN THE MATTER OF APPLICATION
NO. 41539 FILED BY EVERETT E.
BERG, DBA FALCON EXPLORATIONS
TO APPROPRIATE WATER FROM AN
UNDERGROUND SOURCE IN BIG
SMOKEY VALLEY

RULING

INTRODUCTION

Application 41539 was filed June 18, 1980, by Everett E. Berg, dba Falcon Explorations to appropriate 1.11 c.f.s. of water from an underground source for mining, milling, and domestic purposes. Water is to be diverted from its source at a point within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, T.3N., R.39E., M.D.B. & M. The Point of Diversion is described as the Desert Well and is located on Bureau of Land Management property. 1/ The place of use is described as portions of the SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28; S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 29; E $\frac{1}{2}$ Section 32; N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$ of Section 33, all in T.3N., R.38 $\frac{1}{2}$ E., M.D.B. & M. Portions of the S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 30; portions of the NE $\frac{1}{4}$, S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 31, all of NW $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$ of Section 31, all in T.3N., R.39E., M.D.B. & M.

A field investigation was held at the proposed point of diversion on July 7, 1981. 2/ The purpose of that investigation was to determine if the proposed point of diversion was the same as the point of diversion for Permit 12032, Certificate 3566, which stands in the name of Zimmerman Ranching Corporation for 0.0034 c.f.s. for stockwatering purposes (100 head of cattle and 10 horses). 3/ Also if the two points of diversion proved to be the same, then a second and third purpose of the investigation was to determine if the well had capacity to serve both users, and if an agreement could be made for distribution.

Representatives of all parties involved participated in the investigation.

FINDINGS OF FACT

I

The well described as Desert Well was located and found to be a hand dug well with a dimension of 5 foot by 5 foot and a depth of 15 feet. Timbers 8 inch square were placed across the top of the well. No other well was located within a radius of 200 feet. The description of the works under Permit 12032 matched the existing Desert Well (i.e. well dimensions, etc.). From these facts it was concluded by all that Desert Well, (the point of diversion for Application 41539) was the same point of diversion as described under Permit 12032, Certificate 3566.

II

The question of necessary well capacity to supply both users was not resolved at the field investigation. Falcon Explorations stated that they would obtain a hydrologist to make a determination of well capacity. The representative of the State Engineer allowed them 60 days from the date of the field investigation to submit that information. Falcon Explorations failed to supply the necessary information within the prescribed time period.

III

In the matter of distribution of waters to both users, no agreement was reached at the field investigation. Both parties agreed to meet at a latter date to discuss the issue. The representative of the State Engineer allowed 60 days for the parties to submit an agreement of use which protected distribution to all concerned. No agreement was submitted within the allotted time period.

CONCLUSIONS

The State Engineer has jurisdiction of the parties and the subject matter of this action. 4/

II

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

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights. 5/

III

It was not determined if sufficient water capacity could be produced at the site to support the existing certificated right and the proposed use.

IV

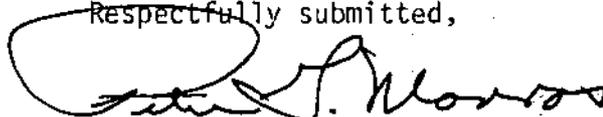
An agreement for water use between the existing certificated water right holder and the applicant was not submitted. Without this agreement the proposed use would conflict with the existing rights.

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Application 41539 is denied on the grounds that the appropriation of additional ground water at the proposed point of diversion would impair the value of the existing certificated right.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/GB/bt

DATED this 15th day of
OCTOBER, 1981.

FOOTNOTES

1. Public Records in the office of the State Engineer.
2. Field Investigation Report - Public Records in the office of the State Engineer.
3. Public Records in the office of the State Engineer.
4. NRS 533.025 and NRS 533.030, Subsection 1.
5. NRS 533.370, Subsections 1 and 4.