

IN THE MATTER OF APPLICATION 44242)
FILED TO APPROPRIATE THE WATERS OF)
BRUSH SPRING IN THOUSAND SPRINGS)
VALLEY, ELKO COUNTY, NEVADA.)

RULING

GENERAL

Application 44242 was filed on August 7, 1981, by J. Wayne Gattshall to appropriate 0.25 c.f.s. of the waters of Brush Spring to be diverted within the NE1/4 SE1/4 Section 21, T.40N., R.64E., M.D.B.&M., to be used for stockwatering and domestic purposes within all of Section 15, T.40N., R.64E., M.D.B.&M.¹

Said application was duly processed, published and became ready for action on March 7, 1982.

Application 44242 was timely protested by Lands of Sierra on October 27, 1981, on the following grounds:

"Lands of Sierra is the present owner of a majority of the decreed water rights on Thousand Springs Creek and its tributaries. Appropriation from Brush Springs, a tributary to Thousand Springs Creek, if approved, would be detrimental to water rights currently owned and being put to beneficial use by Lands of Sierra."¹

The site of the point of diversion was investigated by members of the State Engineer's staff. Such investigation reveals that the proposed source is tributary to Thousand Springs Creek.²

The waters of Thousand Springs Creek and its tributaries have been adjudicated pursuant to Nevada Revised Statutes. The Decree entered in said adjudication enjoins all persons from using the waters of Thousand Springs Creek and its tributaries in any manner other than as set forth in said Decree.³

¹ Application 44242 file of record and on file in the office of the State Engineer.

² Memo in Application 44242 from Elko office of Division of Water Resources dated August 13, 1984.

³ Page 13 of the final Decree filed December 6, 1929, In the Matter of the Determination of the Relative Rights in and to the Waters of Thousand Springs Creek and its Tributaries in Elko County, State of Nevada, (Thousand Springs Creek Decree) in the Fourth Judicial District Court of the State of Nevada in and for the County of Elko.

The proposed appropriation under consideration herein is not set forth in the Thousand Springs Creek Decree.

FINDINGS OF FACT

I.

Brush Spring identified as the source of water in Application 44242 is tributary to Thousand Springs Creek.²

II.

The Thousand Springs Creek Decree prohibits use of the waters of said creek in any manner not set forth in said decree or lawfully proposed under appropriate application to change.³

III.

Application 44242 is not within the parameters of Finding No. II hereof.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of the instant application.⁴

II.

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

1. there is no unappropriated water in the source, or
2. the proposed use or change conflicts with existing rights, or
3. the proposed use⁵ threatens to prove detrimental to the public interest.⁵

III.

The Thousand Springs Creek Decree fully adjudicates, allocates, and describes the use of the waters of Thousand Springs Creek and its tributaries.⁶

⁴ NRS 533.025 and NRS 533.030, subsection 1.

⁵ NRS 533.370, subsection 3.

⁶ Thousand Springs Creek Decree supra, footnote 3.

IV.

Application 44242 is contrary to the provisions of the
Thousand Springs Creek Decree.

RULING

Pursuant to the foregoing Findings of Fact and Conclusions,
the protest to Application 44242 is hereby upheld and Application
44242 is herewith denied on the grounds that granting said
application would conflict with and be detrimental to existing
rights.

Respectfully submitted



Peter G. Morros
State Engineer

PGM/LCR/bl

Dated this 6th day of
SEPTEMBER, 1984.