

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION)
NUMBERS 52805, 52806, 52807 AND)
52823 FILED TO APPROPRIATE WATER)
FROM PEDRO SPRING, VENER SPRING,)
LOWER MCCRIBBEN SPRING AND WATER)
TUNNEL SPRING ALL LOCATED IN HOT)
CREEK VALLEY, NYE COUNTY, STATE)
OF NEVADA.)

RULING

GENERAL

I.

Application 52805 was filed on December 22, 1988 by Joe B. Fallini, Jr., Helen L. Fallini and Susan L. Fallini to appropriate 0.032 c.f.s. of water from Pedro Spring for stockwatering of 1,000 head of cattle and 25 horses within the SW1/4 NE1/4 of Section 28, T.2N., R.50E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NE1/4 Section 28, T.2N., R.50E., M.D.B.&M.¹

Application 52806 was filed on December 22, 1988 by Joe B. Fallini, Jr., Helen L. Fallini and Susan L. Fallini to appropriate 0.032 c.f.s. of water from Vener Spring for stockwatering of 1,000 head of cattle and 25 horses within the NW1/4 NE1/4 of Section 21, T.2N., R.50E., M.D.B.&M. The point of diversion is described as being within the NW1/4 NE1/4 Section 21, T.2N., R.50E., M.D.B.&M.¹

Application 52807 was filed on December 22, 1988 by Joe B. Fallini, Jr., Helen L. Fallini and Susan L. Fallini to appropriate 0.032 c.f.s. of water from Lower McCribben Spring for stockwatering of 1,000 head of cattle and 25 horses within the SW1/4 NE1/4 of Section 21, T.2N., R.50E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NE1/4 Section 21, T.2N., R.50E., M.D.B.&M.¹

¹ Public Record in the office of the State Engineer

Application 52823 was filed on December 22, 1988 by Joe B. Fallini, Jr., Helen L. Fallini and Susan L. Fallini to appropriate 0.032 c.f.s. of water from Water Tunnel Spring for stockwatering of 1,000 head of cattle and 25 horses within the SE1/4 NW1/4 of Section 4, T.1N., R.50E., M.D.B.&M. The point of diversion is described as being within the SE1/4 NW1/4 Section 4, T.1N., R.50E., M.D.B.&M.¹

The subject applications were timely protested on June 9, 1989 by the United States Bureau of Land Management generally on the following grounds: "that the water is required for multiple use management of the public land and the source is a public water reserve which was reserved for public use under the authority of Executive Order 107 on April 17, 1926 and as identified in 43 CFR 2311. The water is therefore, not available for appropriation under Nevada State Law."

FINDINGS OF FACT

I.

The grounds for the United States Bureau of Land Management protest has been extensively and fully considered and ruled upon in prior proceedings.²

II.

The United States has not filed any claims with the State of Nevada to establish a claim of a reserved right by executive order on the sources described under the subject applications.

² See State Engineers Ruling No. 3219 on Application 37061 et. al; issued on July 26, 1985. Public record in the office of the State Engineer.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.³

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where ⁴:

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use or change conflicts with existing rights, or
- C. The proposed use or change threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that if in fact these sources of water meet the criteria of a Public Water Reserve, they shall be recognized as such and any permits granted would be subject to the prior reserved right. Conversely if the sources do not qualify for reserved status, any permits granted on the sources would only be later in priority to any other vested rights that may exist. Only after a general adjudication of all rights would there be a determination made of the extent of any other vested claims and the validity of any claimed or unclaimed reserved rights.

³ NRS Chapter 533.

⁴ NRS Chapter 533.370

RULING

The protests to applications 52805, 52806, 52807 and 52823 are hereby overruled and said applications are hereby approved subject to the following conditions:

1. Payment of the statutory permit fees.
2. To the prior reserved rights of the United States if in fact these rights exist and the sources meet the proper criteria.
3. To all other existing rights.

Respectfully submitted,



Peter G. Morros
State Engineer

PGM/RMT/pm

Date this 23rd day of
January, 1990