

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION)
NUMBER 47204 FILED TO APPROPRIATE)
WATER FROM HAMS SPRINGS, LOCATED)
IN PINE VALLEY, EUREKA COUNTY,)
STATE OF NEVADA.)

RULING

GENERAL

I.

Application 47204 was filed on August 29, 1983 by Tony and Lorraine Sestanovich to appropriate 0.01 c.f.s. of water from Hams Springs for stockwatering of 300 head of cattle within Lots 5 and 6 of Section 26, T.27N., R.52E., M.D.B.&M. The point of diversion is described as being within Lot 5 Section 26, T.27N., R.52E., M.D.B.&M.¹

The subject application was timely protested on March 3, 1984 by the United States Bureau of Land Management generally on the 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

¹ Public Record in the office of the State Engineer

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.

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 application.

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 where⁴:

- 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 this source of water meets the criteria of a Public Water Reserve, it shall be recognized as such and any permits granted would be subject to the prior reserved right. Conversely if the source does not qualify for reserved status, any permit granted on the source 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.

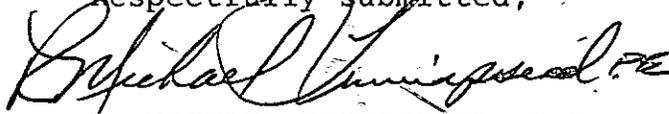
⁴ NRS Chapter 533.370

RULING

The protest to application 47204 hereby overruled and said application is hereby approved subject to:

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

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SW/pm

Date this 26th day of

February, 1990