

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION NUMBER)
44042 FILED TO APPROPRIATE WATER)
FROM MUD SPRING LOCATED WITHIN THE)
SALMON FALLS CREEK AREA, ELKO)
COUNTY, STATE OF NEVADA.)

RULING

GENERAL

I.

Application 44042 was filed on June 29, 1981, by Ronald M. Florence to appropriate 0.10 c.f.s. of water from Mud Spring for stockwatering of 200 head of cattle within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, T.43N., R.61E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 12, T.43N., R.61E., M.D.B.&M.¹

II.

Application 44042 was timely protested on February 5, 1982, by the United States Department of Interior, Bureau of Land Management on the following grounds:

That the water is not available for appropriation under state law because it is already federally reserved as a public water. Land containing this water was withdrawn by E.O. April 17, 1926 as Public Water Reserve No. 107 (43 CFR 2311).

Wherefore protestant prays that the application be denied and that the use of water herein claimed by protestant be confirmed and that an order be entered establishing said right and for such other relief as the State Engineer deems just and proper.

¹ Public record under Application 44042 filed in the Office of the State Engineer.

FINDINGS

I.

By letter dated December 21, 1989, this office requested the names of the permittee and current range user within which the point of diversion and place of use of Applications 45321 and 45322 are located.¹

II.

By letter, dated February 28, 1990, the United States Department of the Interior, Bureau of Land Management, stated that the permittee and current range users are Bell Brand Ranches and Dan Niedbringhaus for lands on which Application 44042 applied for a stockwatering permit.¹

III.

The applicant under Application 44042 does not own or control the land described under the point of diversion and place of use of the application.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the matter described herein.²

II.

Application 44042 was filed for stockwatering purposes on lands which the applicant is not the permittee or current range user. Therefore, the applicant cannot demonstrate the ability to place the water to beneficial use.

² NRS Chapters 533 and 534.

III.

To grant applications to appropriate the public water for stockwatering on public lands for which the applicant is not the grazing permittee or the current range user or where the applicant cannot demonstrate the ability to place the water to beneficial use, would not be in the public interest and welfare.

RULING

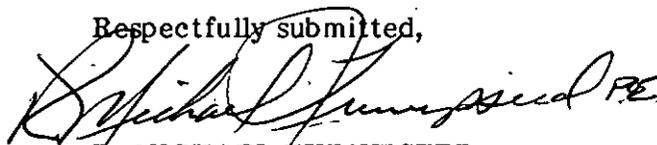
I.

No ruling is made on the grounds of the Bureau of Land Management protest filed on February 5, 1982.

II.

Application 44042 is herewith denied on the grounds that to grant an application for stockwatering purposes on public lands that the applicant is not the permittee or current range user and cannot demonstrate the ability to place the water to beneficial use would not be in the public interest and welfare.

Respectfully submitted,



R. MICHAEL TURNIPSEED
State Engineer

RMT/SW/bk

Dated this 19th day of
September, 1990.