

IN THE OFFICE OF THE STATE ENGINEER
IN THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBERS)
45125, 45126, 45127, AND 45128 TO)
APPROPRIATE WATER FROM UPPER INDIAN)
SPRING #3, UPPER INDIAN SPRING #2,)
BOUNDRY SPRING AND CADET TROUGH SPRING))
ALL LOCATED WITHIN PINE VALLEY, EUREKA))
COUNTY, STATE OF NEVADA.)

RULING

GENERAL

I.

Application 45125 was filed on December 10, 1981, by Frank Paxton & Family and later assigned to Angelo K. Tsakopoulos to appropriate 0.10 c.f.s. of water from Upper Indian Spring #3 for stockwatering of 1,000 head of cattle within the SW1/4 NE1/4 of Section 8, T.24N., R.49E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NE1/4 Section 8, T.24N., R.49E., M.D.B.&M.¹

Application 45126 was filed on December 10, 1981, by Frank Paxton & Family and later assigned to Angelo K. Tsakopoulos to appropriate 0.10 c.f.s. of water from Upper Indian Spring #2 for stockwatering of 1,000 head of cattle within the SE1/4 NW1/4 of Section 8, T.24N., R.49E., M.D.B.&M. The point of diversion is described as being within the SE1/4 NW1/4 Section 8, T.24N., R.49E., M.D.B.&M.¹

Application 45127 was filed on December 10, 1981, by Frank Paxton & Family and later assigned to Angelo K. Tsakopoulos to appropriate 0.10 c.f.s. of water from Boundry Spring for stockwatering of 1,000 head of cattle within the S1/2 SW1/4 of Section 8, T.24N., R.49E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SW1/4 Section 8, T.24N., R.49E., M.D.B.&M.¹

Application 45128 was filed on December 10, 1981, by Frank Paxton & Family and later assigned to Angelo K. Tsakopoulos to appropriate 0.10 c.f.s. of water from Cadet Trough Spring for

¹ Public Record in the office of the State Engineer

stockwatering of 1,000 head of cattle within the N1/2 SE1/4 of Section 11, T.25N., R.49E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SE1/4 Section 11, T.25N., R.49E., M.D.B.&M.¹

Applications 45125, 45126, 45127 and 45128 were protested by the United States Bureau of Land Management on July 20, 1982, which is beyond the final date of July 17, 1985, to formally protest. However the protest states 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.

CONCLUSIONS

I.

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

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.

³ NRS Chapter 533.

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.

⁴ NRS Chapter 533.370

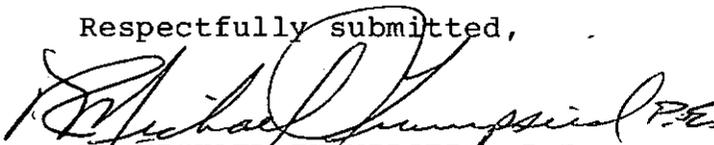
RULING

I.

The informal protests to applications 45125, 45126, 45127 and 45128 are hereby overruled and said applications are 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 21st day of
December, 1990