

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

IN THE MATTER OF APPLICATION 41377)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNNAMED SPRING WITHIN)
THE MASON VALLEY HYDROGRAPHIC BASIN)
(108), LYON COUNTY, NEVADA.)

RULING

4707

GENERAL

I.

Application 41377 was filed on May 16, 1980, by Estrella Cattle Company, to appropriate 0.03125 cubic feet per second (cfs) of water from an unnamed spring for stockwatering of 1000 cattle within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 23, T.10N., R.26E., M.D.B. & M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, T.10N., R.26E., M.D.B. & M. Title to Application 41377 is now held by ELW Ranches, Inc.¹

II.

Application 41377 was protested July 10, 1980, by the United States of America - Forest Service on the following grounds:

1. The proposed point of diversion is on National Forest land which the applicant does not control by lease, rent or ownership, nor do they hold a grazing permit on the subject area.
2. The source is a spring that has been continuously used to water livestock and wildlife since prior to 1870 which constitutes a vested right of the Forest Service for livestock watering purposes. This application would adversely affect the Forest Service vested right.
3. The applicant would not be able to develop or put the water to beneficial use without Forest Service approval, which would only be granted under certain circumstances.

¹ File No. 41377, official records in the office of the State Engineer.

FINDINGS OF FACT

I.

By letter dated November 2, 1998, the State Engineer's staff inquired of the United States of America - Forest Service as to any changes in land status, grazing allotments, range users, etc., which would affect Application 41377, and if the Forest Service wished to maintain its protest of the application.¹

By letter dated December 11, 1998, the Forest Supervisor stated that:

The stated point of diversion (SE¼ SE¼, SEC. 31, T.10N., R.26E.) remains on National Forest system land that the applicant has no authorization or permit to use. The POD is located on the boundary between two livestock grazing allotments which are permitted by the Forest Service to another permittee, FIM Corp. There is insufficient water at this source to provide for both the livestock under permit to FIM Corp., wildlife that are accustomed to using this source and the Applicant.

In addition, the applicant has been informed that Forest Service approval for construction of the proposed works necessary for putting the water to beneficial use as proposed is unlikely... We will not authorize a special use for which the projected water requirements conflict with existing Forest Service uses and rights or will adversely affect National Forest resources.

We wish to maintain our protest of the subject Application.¹

II.

The State Engineer finds that although the applicant does have a livestock grazing allotment somewhere in the area, it does not own or control the land surrounding the point of diversion, or have authorization from the Forest Service to construct the necessary works to divert water from the spring source.¹ To approve a permit for stockwatering when the applicant does not own or control the lands surrounding the source, or have authorization to construct works to divert water from the spring source would threaten to prove detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:³

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

III.

Information from the proper federal regulatory agency, the U.S. Forest Service, indicates that the applicant is not entitled to graze livestock upon the lands surrounding the point of diversion, or is authorized to construct works to divert water from the spring source. The State Engineer concludes that it would not be in the public interest to approve an application for stockwatering purposes where the applicant does not have authorization to use water from the spring source.

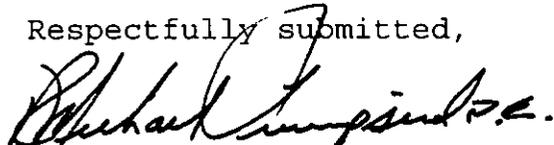
² NRS Chapter 533.

³ NRS § 533.370(3).

RULING

Application 41377 is hereby denied on the grounds that to approve an application for stockwatering use where the applicant is not authorized by the federal regulatory agency to use the lands surrounding the spring source would threaten to prove detrimental to the public interest. No ruling is made on the other protest claims.

Respectfully submitted,


R. Michael Turnipseed, P.E.
State Engineer

RMT/CAB/cl

Dated this 11th day of
March, 1999.