

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

IN THE MATTER OF APPLICATION 38981)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF EAST SQUAW CREEK)
SPRING, WITHIN THE INDEPENDENCE)
VALLEY HYDROGRAPHIC BASIN (188),)
ELKO COUNTY, NEVADA.)

RULING

#6180

GENERAL

I.

Application 38981 was filed on September 7, 1979, by Robert J. Beaumont, d.b.a. Big Springs Ranch, later assigned to Pequop Conservancy, LLC, to appropriate 0.05 cubic feet per second (cfs) of water from East Squaw Creek Spring for stockwater purposes within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T.37N., R.65E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 12.¹

II.

Application 38981 was timely protested by the United States Department of the Interior, Bureau of Land Management (BLM) because there is no water available for appropriation due to the land containing the springs being withdrawn by executive order under Public Water Reserve No. 107, April 17, 1926.¹

FINDINGS OF FACT

I.

Nevada Revised Statute § 533.365(3) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an Application to appropriate the public waters of the State of Nevada. The State Engineer finds that in the case of protested Application 38981, there is sufficient information contained within the records of the Office of the State Engineer to gain a full understanding of the issues and a hearing on this matter is not required.

¹ File No. 38981, official records in the Office of the State Engineer.

II.

An examination of the records of the Office of the State Engineer shows that there are no additional water right permits, proofs or claims filed at the proposed point of diversion.² The State Engineer finds that there are no existing water rights at the proposed point of diversion, beyond the Protestant's assertion in its protest of a Public Water Reserve No. 107 (PWR 107).

III.

In 2003, the Nevada Legislature amended NRS § 533.503 to provide, in part, that:

The State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock unless:

- (a) The applicant for the permit is legally entitled to place the livestock on the lands for which the permit is sought, and:
 - (1) Owns, leases or otherwise possesses a legal or proprietary interest in the livestock on or to be placed on the lands for which the permit is sought; or
 - (2) Has received from a person described in subparagraph (1), authorization to have physical custody of the livestock on or to be placed on the lands for which the permit is sought, and authorization to care for, control and maintain such livestock;
- (b) The forage serving the beneficial use of the water to be appropriated is not encumbered by an adjudicated grazing preference recognized pursuant to law for the benefit of a person other than the applicant for the permit; and
- (c) The lack of encumbrance required by paragraph (b) is demonstrated by reasonable means, including, without limitation, evidence of a valid grazing permit, other than a temporary grazing permit, that is issued by the appropriate governmental entity to the applicant for the permit.³

The State Engineer finds that the Applicant is entitled by the proper federal agency to place livestock upon the public range described under Application 38981.⁴

III.

The Protestant was asked to provide additional information including the flow of the springs. In response, the BLM has taken spring flow measurements on two separate occasions, the first being on September 6, 1979, and the last being on July 7, 2008. The

² Nevada Division of Water Resources' Water Rights Database, Special Hydrographic Abstract, October 10, 2011.

³ NRS § 533.503.

⁴ See, BLM correspondence of March 30, 2011, File No. 38981, official records in the Office of the State Engineer.

flow was found to be 0.61 gallons per minute (gpm), or 878.4 gallons per day in 1979 and 1.62 gpm, or 2,332.8 gallons per day in 2008. The State Engineer finds the flow of East Squaw Creek Spring to be sufficient for the watering of cattle and horses on the Applicant's allotment in conjunction with the Applicant's other existing stockwatering rights.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵

II.

The State Engineer is prohibited by law from granting an Application to appropriate the public waters where:⁶

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectable interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that stockwatering is a beneficial use and the Applicant is the current range user of the federal grazing allotment; therefore, the approval of Application 38981 would not threaten to prove detrimental to the public interest.

IV.

The State Engineer concludes there is insufficient evidence in this record to determine if the water sources described under Application 38981 meet the criteria of a PWR 107, as outlined in State Engineer's Ruling No. 5729. The extent and validity of the reserved claim may only be determined after a general adjudication of all water rights, if and when such proof of claims are filed and adjudicated. If the PWR 107 claim is determined to be valid, it shall be recognized and any permit granted would be subject to the prior reserved right.

⁵ NRS Chapter 533.

⁶ NRS § 533.370 (5).

V.

The State Engineer concludes the purpose for which water was reserved under PWR 107 is general public use limited to human and stockwater consumption by grazing permittees and if a source has a legitimate PWR 107 claim on it, it is only the minimal quantity of water necessary to accomplish the purpose of the reservation.⁷

VI.

The State Engineer concludes that the granting of Application 38981 will not conflict with any minimal quantity of water required that may be reserved by PWR 107, if such reserved right exists at the source.

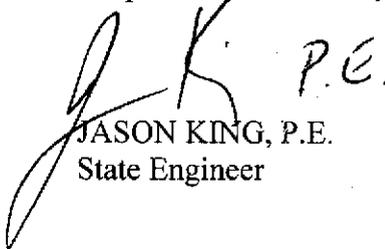
VII.

The purpose of the Executive Order creating PWR 107 was to prevent competing range users from monopolizing the public range through the control of isolated and important springs. With the advent of grazing allotments controlled by the BLM, such competition has been eliminated. Under the current system, only authorized range users possessing a grazing permit issued by the BLM are authorized on designated allotments. The State Engineer concludes that to issue a stockwater right to an authorized range user, is consistent with the primary purpose of use of water under a PWR 107 claim.

RULING

The protest to Application 38981 is hereby overruled and the Application is approved subject to existing rights and payment of the statutory permit fee.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 7th day of
May, 2012.

⁷ State Engineer's Ruling No. 5729, April 27, 2007, official records in the Office of the State Engineer.