

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

IN THE MATTER OF APPLICATION 67239)
FILED TO APPROPRIATE THE PUBLIC)
WATERS FROM AN UNDERGROUND SOURCE)
WITHIN THE ELKO SEGMENT)
HYDROGRAPHIC BASIN (49), ELKO)
COUNTY NEVADA.)

RULING

#5209

GENERAL

I.

Application 67239 was filed on February 28, 2001, by Elko Blacksmith Shop, Inc. to appropriate 0.01 cubic feet per second of water from an underground source for stockwatering purposes within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 18, T.34N., R.56E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 18.¹

II.

The application was timely protested by the United States Department of the Interior, Bureau of Land Management (BLM) on the following grounds:¹

Dewar Well is located on public land that will be sold to the City of Elko in the near future for a landfill expansion. The livestock permittee, Frank Arregui, was notified by certified letter two years ago that the parcel of land where the Dewar Well is located is part of a Recreation and Public Purposes conveyance to the City of Elko. He was asked to sign a waiver for the range improvements on the affected land. He never signed the waiver, but he did receive the letter, so he was aware that the land where Dewar Well was located would be sold to the City of Elko and would be covered by a landfill. The applicant will not be able to make beneficial use of the well for livestock water once the land is sold to the city.

The well will be plugged when the city gets ownership of the parcels.

BLM will not issue a cooperative rangeland improvement agreement to the applicant for Dewar Well. All water rights acquired for stockwater on

¹ File No. 67239, official records in the Office of the State Engineer.

public land after August 21, 1995 must be in accordance with 43 CFR 4120.3-9, that use of water on public land for the purpose of livestock watering on public land, to the extent allowed by the law of the state, shall be acquired, perfected, maintained and administered in the name of the United States. Constraints imposed on BLM, and only BLM, by NRS 533.503 are the reason that we will not issue a cooperative rangeland improvement agreement. It is our opinion that NRS 533.503 is discriminatory and unconstitutional and until all legal remedies are exhausted we will not permit, through cooperative agreement, the development of livestock waters on public lands.

BLM cost shared in the development of this project. Normally, BLM would request part of the water rights to protect the investment of public funds. BLM did apply for water rights in 1981, but withdrew the application in 1984 because the water was too salty for cows to drink. Poor water quality is another reason that the permittee will not be able to prove beneficial use of the water for livestock.

FINDINGS OF FACT

I.

The BLM issued Patent No. 27-2002-0065 on September 3, 2002. The patent authorized the disposal of approximately 160 acres of land within the NW $\frac{1}{4}$ of Section 18, T.34N., R.56E., M.D.B.&M., to the City of Elko.¹ The State Engineer finds that the applicant does not own or control the land at the proposed point of diversion under Application 67239.

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 an application to appropriate the public waters where:³

² NRS § 533 and 534.

³ NRS § 533.370(3).

- 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 protectible 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 the applicant does not own or control the land at the well location under Application 67239. The State Engineer further concludes that to grant an application to appropriate the public waters where the applicant does not own or control the land would threaten to prove detrimental to the public interest.

RULING

Application 67239 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest. The protest to Application 67239 is upheld in part and denied in part.

Respectfully submitted,



HUGH RICCI, P.E.
STATE ENGINEER

HR/TW/dl

Dated this 10th day of

February, 2003.