

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

IN THE MATTER OF APPLICATION)
31536 FILED TO APPROPRIATE)
AND PROTESTED APPLICATIONS)
66947 AND 66948 FILED TO)
CHANGE THE UNDERGROUND WATERS)
OF THE STONE CABIN VALLEY)
HYDROGRAPHIC BASIN (149), NYE)
COUNTY, NEVADA.)

RULING

#5315

GENERAL

I.

Application 31536 was filed on May 9, 1977, by Green Ridge Water Company to appropriate 5.4 cubic feet per second (cfs) of underground water from the Stone Cabin Valley Hydrographic Basin for irrigation and domestic purposes within the N½ of Section 22, T.1N., R.46E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 22. The remarks section of the application indicates that entry to the proposed place of use will be pursuant to a Carey Act application.¹ The records of the Office of the State Engineer indicate that Rick Hale is the present owner of Application 31536.

II.

Application 66947 was filed on November 15, 2000, by Rick L. Hale to change the point of diversion and place of use of 2.7 cfs, a portion of the water previously requested for appropriation under Application 31536. The water is to be used for irrigation and domestic purposes within the NE¼ of Section 14, T.1N., R.46E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ NE¼ of Section 14, T.1N., R.46E., M.D.B.&M. The remarks section of the application indicates that entry to the proposed place of use will be pursuant to a Carey Act application.² The existing place of use is described as being located within the N½ of Section 22, T.1N., R.46E., M.D.B.&M.,

¹ File No. 31536, official records in the Office of the State Engineer.

² File No. 66947, official records in the Office of the State Engineer.

Ruling
Page 2

with the existing point of diversion being described as being located within the NW¼ NE¼ of said Section 22.

III.

Application 66948 was filed on November 15, 2000, by Rick L. Hale to change the point of diversion and place of use of 2.7 cfs, a portion of the water previously appropriated under Application 31536. The water is to be used for irrigation and domestic purposes within the NW¼ of Section 14, T.1N., R.46E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ NW¼ of Section 14, T.1N., R.46E., M.D.B.&M. The remarks section of the application indicates that entry to the proposed place of use will be pursuant to a Carey Act application.³ The existing place of use is described as being located within the N½ of Section 22, T.1N., R.46E., M.D.B.&M., with the existing point of diversion being described as being located within the NW¼ NE¼ of said Section 22.

IV.

In State Engineer's Ruling No. 5020, the State Engineer summarized a long history relating to Application 31536, among others.⁴

V.

Applications 66947 and 66948 were protested by Elwood Wayne Hage on the grounds that the applications are near existing stockwater wells owned by the protestant under Permits 43011 and 43016, and are on the Ralston grazing allotment, which is an appurtenance to the Pine Creek Ranch base properties owned by the Protestant.

VI.

The applicant filed an answer to the protests indicating that the protestant referenced the stockwater wells, but did not allege there would be any interference with their use. The applicant alleged that the protestant's stockwater wells are not in close proximity to the proposed points of diversion under these

³ File No. 66948, official records in the Office of the State Engineer.

⁴ State Engineer's Ruling No. 5020, dated May 9, 2001, official records in the Office of the State Engineer.

applications; therefore, there will be minimal interference with any existing rights he may hold. Also, that the protestant no longer holds any grazing permits for the Ralston allotment, as his grazing permit expired on February 28, 1993. The applicant also provided evidence that the U.S. Bureau of Land Management has classified the lands identified as the proposed places of use under these applications as suitable for entry under Desert Land Entry Permit N-65593.

VII.

The protestant filed a response to the answer alleging that the wells under Permits 43011 and 43016 are within one mile of the proposed points of diversion under the applications, that pumping under the applications at a rate to effectively irrigate a crop would cause a drawdown in the static water level at his wells likely forcing him to deepen his shallow stockwater wells or at least retool the wells to set the pump at a deeper level.^{2,3}

The protestant further alleged that his water rights are a fee interest in the federal lands and "[a] fee in the use of land obviously involves the inheritable right to use the surface of the land whether the land itself (the subject of the property) is owned by the fee holder, as on patented lands, or whether the subject of the property (the land itself) is owned by the federal government."^{2,3}

The final phase of *Hage v. United States* is scheduled for trial in May 2004. The issue in this final phase of *Hage v. United States* deals with whether or not Hage's rights were taken and if so, the compensation to be paid by the United States. Following the trial in May 2004, the Court could rule if there has been a temporary taking, in which case the United States would pay compensation and damages accordingly, and Hage would begin using Well No. 2 and No. 3 as well the entirety of the Ralston allotment, including the area applied for by Hale.

On the other hand, the Court could rule that the federal government has taken the Pine Creek Ranch permanently in which case, the federal government would own all of the water property rights on the Ralston allotment and Hale could then deal directly with the federal government on the issue of land and water in the area of concern.

The attention of the State Engineer is respectfully directed to Ruling #5020. The Hale applications are similar to those applications addressed in Ruling #5020. In addition to the matters discussed above raised in the Hage protest, the Hale application should be denied based upon the rationale set forth in Ruling #5020.^{2,3}

FINDINGS OF FACT

I.

By letter dated July 30, 2003, the State Engineer was informed that the place of use proposed under Applications 66947 and 66948 have been classified by the U.S. Department of Interior, Bureau of Land Management as suitable for agricultural entry.¹ Therefore, the State Engineer finds that the reasoning behind State Engineer's Ruling No. 5020, the applicants lack of right of entry, is inapplicable to Applications 66947 and 66948.

II.

The State Engineer finds that the point of diversion under Permit 43011 is approximately 5 miles from the points of diversion proposed under Applications 66947 and 66948. The State Engineer finds that the point of diversion under Permit 43016 is approximately 2 miles from the points of diversion proposed under Applications 66947 and 66948.

III.

Nevada Revised Statute 534.110(4) provides that "it is a condition of each appropriation of ground water acquired under this chapter that the right of the appropriator relates to a specific quantity of water and that the right must allow for a reasonable lowering of the static water level at the appropriator's point of diversion." Nevada Revised Statute 534.110(5) provides that the section does not prevent the granting of permits to applicants later in time on the grounds that the diversions under the proposed later appropriations may cause the water level to be lowered at the point of diversion of a prior appropriator so long as rights of the holder of existing appropriations can be satisfied. The State Engineer finds the law provides that a junior appropriator may cause a drawdown in the static water level at a senior appropriator's well and as a

result, the senior appropriator may need to deepen his shallow stockwater wells or retool the wells to set the pump at a deeper level.

IV.

It has been the policy of state engineers to grant water rights permits to those applicants who have been granted land entry applications by the U.S. Bureau of Land management, if other statutory criteria have been met.⁵ The State Engineer finds that whether or not the protestant's rights were taken and if so, the compensation to be paid by the United States is a matter between the United States and the protestant. The U.S. Bureau of Land Management has indicated the applicant is being granted right of entry to the proposed place of use under the change applications; therefore, the State Engineer may consider the water right applications.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.⁶

II.

The State Engineer is prohibited by law from granting a permit to appropriate or a change application to appropriate the public waters where:⁷

- 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.

The State Engineer concludes to grant the new appropriation or the change applications would not interfere with existing rights or threaten to prove detrimental the public interest.

⁵ State Engineer's Ruling No. 65, dated October 39, 1950, official records in the Office of the State Engineer.

⁶ NRS chapters 533 and 534.

⁷ NRS § 533.370(3).

III.

The State Engineer concludes that Nevada Water Law provides for a reasonable lowering of the water table at a senior appropriator's point of diversion.

IV.

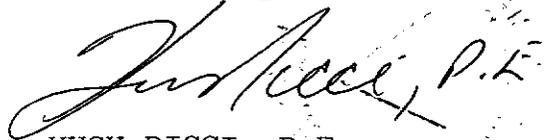
The State Engineer concludes the applicant, by the U.S. Bureau of Land Management's indication of right of entry, has demonstrated an ability to try to place the water to beneficial use.

RULING

Application 31536 is hereby approved and the protests to Applications 66947 and 66948 are hereby overruled and the applications are granted subject to:

1. Existing rights,
2. Notice of final and formal entry by the U.S. Department of Interior, Bureau of Land Management;
3. Submission of a monitoring plan as contemplated in the Amended Stipulation dated February 15, 1984; and
4. Payment of statutory permit fees.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/SJT/jm

Dated this 5th day of
January, 2004.