

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

IN THE MATTER OF APPLICATION 14754)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF ANTELOPE FLAT (FLOOD)
WATERS) IN CACTUS FLAT, NYE COUNTY,)
NEVADA.)

RULING
3774

GENERAL

I.

Application 14754¹ was filed on January 2, 1953 by James M. Daniels to appropriate 0.10 c.f.s. of water from flood waters on Antelope Flat for stockwatering, within the NW1/4 NE1/4 Section 19, T.3S., R.48E., M.D.B.&M. The point of diversion is described as being within the NW1/4 NE1/4 Section 19, T.3S., R.48E., M.D.B.&M.

Application 14754² was timely protested by John Jay Casey on the following grounds:

"The water sought to be appropriated being flood water and the run-off from flash rains and seasonal snows, in an area used by the said John Jay Casey, and his predecessors for the past fifty years. The range in the area is now stocked to capacity and the granting of this application will interfere with the established rights of the said John Jay Casey both as to range and water in the area, will interfere with the customary livestock uses in the area, and the granting of the application would result in irreparable injury to the said John Jay Casey and result in a multiplicity of legal actions between the users of the area, including the said John Jay Casey. That the application is further protested for the reason of the indefiniteness of the application and for which indefiniteness the application should be dismissed. That said application

¹ Public record in the office of the State Engineer.

² Public record in the office of the State Engineer under Application 14754.

is further protested for the reason that the Office of the State Engineer has no jurisdiction over flood waters of the nature sought to be appropriated, and therefore the application should be dismissed. That the application is further protested for the reason that there are no unappropriated waters within the area which the applications is made, all of the waters in said area having been fully appropriated. The protestant prays that the application be denied or if issued then subject to the prior rights of the protestant."

FINDINGS OF FACT

I.

The current owner of record³ of application 14754 is the United States of America.

II.

A letter⁴ dated February 5, 1953, to the State Engineer from E.R. Greenslet, Regional Chief, Division of Range Management, United States Department of Interior, Bureau of Land Management, states in part "14754 - James M. Daniels to appropriate water (flood waters) on Antelope Flat at a point in the NW1/4 NE1/4 Section 19, T.3S., R.43E. This land is included in a bombing range, therefore this Bureau has no jurisdiction over area."

III.

In a letter⁵ dated June 25, 1959, to the State Engineer, Donald D. Hanneman CWO W-4 USAF Asst. Director of Administration regarding Application 14754 states in part - "2) Please be advised that the United States Air Force is in the process of acquiring all private interests within the range, also the Air

³ Public record in the office of the State Engineer under Application 14754.

⁴ Public record in the office of the State Engineer under Application 14726.

⁵ Public record in the office of the State Engineer under Application 14754.

Force has a long standing policy to refuse entrance onto the range area to anyone interested in obtaining private interests or otherwise, for safety reasons involved. 3) It is the recommendation of this Headquarters that subject permit either be disapproved or cancelled."

IV.

The United States Air Force has stated that applications located within the bombing range area must be disapproved.⁶

V.

The protest to Application 14754 is moot since the area is no longer available to any grazing rights.

VI.

The record does provide evidence that approval of the subject application would not be in the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.⁷

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁸

- 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 threatens to prove detrimental to the public interest.

⁶ Public record in the office of the State Engineer under Application 14754.

⁷ NRS Chapter 533.

⁸ NRS Chapter 533.370 subsection 3.

III.

The protest to Application 14754 is moot since the area is no longer available to any grazing rights.

IV.

The land area in which Application 14754 is located is now part of a bombing range for the United States Air Force and the Government is not interested in pursuing an application for water use in that area.

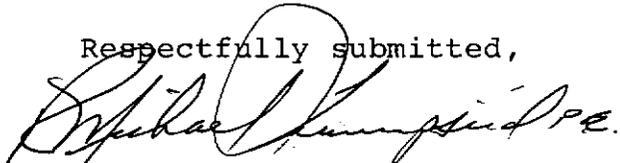
V.

There is evidence that granting approval of Application 14754 would not be in the public interest.

RULING

Application 14754 is hereby denied on the grounds that the source of water is located within a hazardous area (bombing range), the current owner is not interested in pursuing the application and approval of said application would not be in the public interest. There is no ruling on the protest to application 14754.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/GC/pm

Dated this 17th day of
January, 1991