

IN THE OFFICE OF STATE ENGINEER
OF THE STATE OF NEVADA

IN THE MATTER OF IN THE MATTER OF)
APPLICATION 17319 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF)
GRASSY SPRING, LOCATED WITHIN THE)
SPRING VALLEY HYDROGRAPHIC BASIN)
(184), WHITE PINE COUNTY, NEVADA.)

RULING

4731

GENERAL

I.

Application 17319 was filed on July 1, 1957, by B.H. Robison to appropriate 0.25 cubic feet per second of water from Grassy Spring for stockwatering purposes within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26, T.23N., R.66E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 26.¹

II.

Application 17319 was timely protested by William Sellas on the following grounds:¹

The waters applied for are fully appropriated and the approval of Application Number 17319 would be in conflict with a decree of injunction entered in the Seventh Judicial District Court of the State of Nevada, In and For the County of White Pine wherein William Sellas is Plaintiff and Jesse L. Kirk and Burton H. Robison are Defendants and being Case No. 6920 of said court.

III.

Ownership of Application 17319 has never been transferred from the original applicant, therefore B.H. Robison remains the owner of record of Application 17319 in the office of the State Engineer.¹

¹ File No. 17319, official records in the office of the State Engineer.

FINDINGS OF FACT

I.

Application 17319 requests an appropriation of water from Grassy Springs which is located within the NW¼ NE¼ of Section 26, T.23N., R.66E., M.D.B.&M. On April 8, 1999, representatives of the office of the State Engineer met within personnel from the Bureau of Land Management at their Ely field office to discuss the current ownership of the range allotment which contains the point of diversion and place of use described under Application 17319. It was determined that Grassy Spring is located within the Tippett Grazing Allotment which is currently being leased to Vogler Ranches from George Swallow. The State Engineer finds that the applicant is not the authorized range permittee for the place of use described under Application 17319.

II.

The State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock on public lands unless the applicant for the permit is legally entitled to place the livestock on the public lands for which the permit is sought.² The State Engineer finds that since the applicant is not legally entitled to place livestock on the Tippett Allotment Application 17319 must be denied.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

² NRS § 533.503(1)(a).

³ NRS Chapter 533.

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁴

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

III.

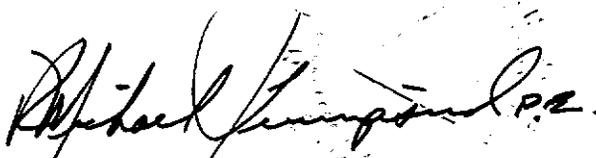
It has been a long established policy within the office of the State Engineer to limit the approval of applications filed to appropriate water for stockwatering purposes upon federal land to those applicants which are the current federal range permittees. Information supplied by the proper federal regulatory agency indicates that B.H. Robison is not permitted to graze livestock upon the lands described within the place of use of the subject application. NRS § 533.503 provides that the State Engineer shall not issue a permit to appropriate water for the purposes of watering livestock on the public lands unless the applicant for the permit is legally entitled to place the livestock on the public lands for which the permit is sought. The State Engineer concludes that it would not be in the public interest to approve an application to appropriate water for stockwatering purposes upon federal lands to an applicant who is not the current federal range permittee.

⁴ NRS § 533.370(3).

RULING

Application 17319 is hereby denied on the grounds that to approve an application for stockwatering use on a source where the applicant can not demonstrate the ability to place the water to beneficial use would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.

State Engineer

RMT/MDB/cl

Dated this 11th day of
May, 1999.