

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

IN THE MATTER OF APPLICATION)
69474 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF BIG COTTON)
WOOD SPRING WITHIN THE DIXIE)
VALLEY HYDROGRAPHIC BASIN (128),)
CHURCHILL COUNTY, NEVADA.)

RULING

5584

GENERAL

I.

Application 69474 was filed on January 15, 2003, by Michael Maestri, and later assigned to LSPI Exchange Corporation to appropriate 0.009 cubic feet per second of water from Big Cotton Wood Spring for stockwatering purposes within the NW¼ NE¼ of Section 36, T.25N., R.35E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of Section 36, T.25N., R.35E., M.D.B.&M.¹

II.

Application 69474 was timely protested by the United States Department of the Interior, Bureau of Land Management (BLM) on issues not addressed by this ruling.

FINDINGS OF FACT

I.

Application 69474 was filed to appropriate surface water on lands administrated by the BLM. The State Engineer finds that a determination was made through an examination of the records in the Office of the State Engineer that with the exception of Application 69474, there are no additional permitted, vested or reserved water right filings appurtenant to this spring.

II.

Nevada Revised Statute § 533.503 provides, 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 File No. 69474, official records in the Office of the State Engineer.

- (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.

The BLM informed the State Engineer, by letters dated June 8, 2005, and March 2, 2006, that the point of diversion and place of use is not within the applicants grazing Allotment and the applicant does not have a permit to run livestock on the neighboring allotment where Big Cottonwood Spring is located. The State Engineer finds that the applicant is not legally entitled to place livestock upon the federal lands compromising the point of diversion and place of use under Application 69474. The State Engineer finds to approve a permit for stockwatering when the applicant is not authorized to use the lands for grazing would threaten to prove detrimental to the public interest.

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

- 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

² NRS chapter 533.

³ NRS § 533.370(4).

- D. the proposed use or change threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that the applicant is not the current range user for the allotment containing the water source; therefore, the approval of Application 69474 would threaten to prove detrimental to the public interest.

RULING

Application 69474 is hereby denied on the grounds that to approve an application for stockwatering purposes where the applicant is not the authorized range user would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/WHR/jm

Dated this 13th day of
March, 2006.