

IN THE MATTER OF APPLICATIONS NOS.
14361 to 14370, INCLUSIVE, FILED BY
JOHN E. SMITH TO APPROPRIATE THE
WATERS OF SEVERAL SPRINGS FOR STOCK-
WATERING PURPOSES IN PERSHING COUNTY,
NEVADA.

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RULING

Description of Applications:

The following described applications were filed by John E. Smith on June 27, 1952 to appropriate 0.10 c.f.s. of the waters of each source for the watering of 150 head of cattle and for domestic purposes from January 1st to December 31st of each year. The place of use under each of these filings is within the same subdivision as the point of diversion:

- 14361 - filed to appropriate the waters of Mud Springs within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 18, T. 32 N., R. 31 E., M.D.B.&M.
- 14362 - filed to appropriate the waters of Summit Springs at a point within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 32, T. 33 N., R. 31 E., M.D.B.&M.
- 14363 - filed to appropriate the waters of Camp Springs at a point within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 11, T. 32 N., R. 31 E., M.D.B.&M.
- 14364 - filed to appropriate the waters of Willow Springs within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 23, T. 33 N., R. 31 E., M.D.B.&M.
- 14365 - filed to appropriate the waters of Little Antelope Springs at a point within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 31, T. 33 N., R. 31 E., M.D.B.&M.
- 14366 - filed to appropriate the waters of Big Antelope Spring at a point within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 33, T. 33 N., R. 31 E., M.D.B.&M.
- 14367 - filed to appropriate the waters of Cavanaugh Springs at a point within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 24, T. 32 N., R. 31 E., M.D.B.&M.
- 14368 - filed to appropriate the waters of Tie Cabin Springs at a point within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 7, T. 32 N., R. 31 E., M.D.B.&M.
- 14369 - filed to appropriate the waters of Flat Rock Springs at a point within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 16, T. 32 N., R. 31 E., M.D.B.&M.
- 14370 - filed to appropriate the waters of Murder Springs at a point within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 9, T. 32 N., R. 31 E., M.D.B.&M.

Protests to the granting of these applications were filed as follows:

Applications 14361-14370, inclusive: On January 19, 1953 by J. O. Hill on grounds that he holds a Taylor grazing permit to graze sheep in the area of these springs and that the granting of permits under these applications will interfere with his range operations.

Applications Nos. 14361-14367, inclusive, and 14369: On December 24, 1952 by Berry Duncan on grounds that the protestant has aided in developing this water by cleaning out the springs each year and has used it for the last three years. The protestant believes that his predecessors have also made beneficial use of this water. If this application is granted the protestant believes that other Taylor grazing permit holders will be denied sufficient water in dry years to supply their livestock needs.

Applications Nos. 14363, 14368 and 14370: On December 24, 1952 by Berry Duncan on grounds that the springs are located on railroad land leased by the protestant for grazing purposes from the Southern Pacific Railroad Company. The protestant believes that the waters are pertinent to the land in that he has made beneficial use of the water for the last three years and believes his predecessors have done the same; that the protestant has aided in the developing and maintenance of the springs, and believes this also helps give him or his leaseor priority over the applicant and that if the applications are approved he believes other Taylor grazing permit holders would be denied sufficient water in dry years to satisfy their livestock needs.

Application Nos. 14362 and 14365: On February 2, 1953 by Claude Hall on grounds that protestant and his predecessors have maintained and used said springs for watering livestock over a period of years and that a considerable area surrounding these springs has been used in common by livestock owners for grazing livestock for a period of years.

Applications Nos. 14364 and 14366: On February 2, 1953 by Claude Hall on grounds that he has a lease with the Southern Pacific Land Company on the land on which these springs are located; that protestant and his predecessors have maintained and used said springs for watering livestock over a period of years and that a considerable area surrounding these springs has been used in common by livestock owners for grazing livestock for a period of years.

General:

An informal hearing in the matter of these applications was held in Lovelock, Nevada, on July 30, 1953 by E. J. DeRicco, Field Deputy State Engineer. From said hearing and from records in the office of State Engineer, together with records from the office of

the Bureau of Land Management, Division of Grazing, Reno, Nevada, the following information has been obtained:

All of the springs applied for are located in the Antelope Mountain range area at a point approximately 36 miles north of Lovelock, Nevada.

The range area serviced by these springs is used in common by Taylor grazing leasees and by leasees of the Southern Pacific Land Company.

The grazing use in this area, as determined by the Division of Grazing, is as follows:

The total carrying capacity for the range serviced by these springs -

Federal	1,446	A.U.Ms.
Private land	1,320	"
	<u>2,766</u>	Total A.U.Ms.

The allotment of the Federal range -

Claude Hall	83	A.U.Ms.
John Smith	963	"
Berry Duncan	108	"

The allotment for private land -

Berry Duncan	727	A.U.Ms.
Claude Hall	583	"

There is a balance of 292 A.U.Ms. to be allocated on the Federal range. At the time of the investigation, representatives of the Bureau of Land Management felt that this right would be adjudicated to J. O. Hill.

Berry Duncan and Claude Hall are the grazing leasees on the following described private lands owned by the Southern Pacific Land Company:

Section 7;
Section 9;
E $\frac{1}{2}$, NW $\frac{1}{4}$, Lots 1, 2 and 3, and NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 11;
All in T. 32 N., R. 31 E., M.D.B.&M.

Section 23;
N $\frac{1}{2}$, SW $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$, Section 33;
All in T. 33 N., R. 31 E., M.D.B.&M.

From the above information it is evident that John E. Smith has filed the following applications on springs located on private land on which he holds no grazing leases:

Application No. 14363 - Camp Springs
" " 14364 - Willow Springs
" " 14366 - Big Antelope Springs
" " 14368 - Tie Cabin Springs
" " 14370 - Murder Springs

The following applications have been filed on springs which are located on Federal range. Applicant John E. Smith holds a Taylor grazing permit on the lands serviced by these springs in common with Protestants Claude Hall and Berry Duncan. If J. O. Hill has been granted a grazing permit at this time, he is also grazing livestock on these lands:

Application No. 14361 - Mud Spring
" " 14362 - Summit Spring
" " 14365 - Little Antelope Spring
" " 14367 - Cavanaugh Spring
" " 14369 - Flat Rock Springs

OPINION:

Although it is recognized that the cattle of all the permittees and leasees graze the range area serviced by these springs in common, it is the opinion of this office that the granting of permits under the applications that have been filed to appropriate waters of springs located on private land would impair the value of existing grazing rights. The Applicant, John E. Smith, holds no grazing lease on the private lands and cannot place these waters to beneficial use without trespassing on private lands and impairing the value of existing grazing rights on said lands.

With regard to the applications that have been filed to appropriate the waters of springs located on the Federal range, it is the opinion of this office that these applications can be granted without injury to other grazing permittees in the area. The rights of the protestants to the use of the waters of these springs in connection with their range operations are recognized.

RULING

The protests to the granting of Applications Nos. 14363, 14364, 14366, 14368 and 14370 are herewith sustained and said applications are denied on grounds that the granting thereof would impair the value of existing rights and be detrimental to the public welfare.

The protests to the granting of Applications Nos. 14361, 14362, 14365, 14367 and 14369 are herewith overruled on grounds that the granting thereof would not impair the value of existing grazing rights or be otherwise detrimental to the public welfare. Permits will be issued under said applications upon receipt of the statutory permit fees, subject to the following provision:

"This permit is issued with the understanding that the livestock of all other qualified grazing permittees shall have privileges to water at the source at any and all times."

Respectfully submitted,


HUGH A. SHAMBERGER
State Engineer

Dated this 16th
day of June, 1955.