

IN THE MATTER OF APPLICATION)
7473 TO APPROPRIATE WATER)
FROM CANON SPRING IN LANDER)
COUNTY, NEVADA.)

R U L I N G

GENERAL:

Application 7473 was filed on August 6, 1925 in the name of Cornell and Hesse to appropriate 0.1 c.f.s. of water from Canon Spring, to be diverted within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 8, T.16N., R.38E., M.D.B.& M., and to be used for stock watering purposes for 200 head of cattle and 1,000 head of sheep within the same 40 acre subdivision as the point of diversion.

A protest to the granting of Application 7473 was filed on October 3, 1925 in the name of George B. Williams on the grounds that Canon Spring actually refers to a spring which has for many years been known as Road Canyon Spring and that the waters from this source are tributary to East Gate Creek which serves the East Gate Ranch in Churchill County and that the granting of a permit under this application would interfere with existing rights.

A second protest to the granting of Application 7473 was filed on October 9, 1925 in the name of Ramon Arrizabalga on the grounds that the spring had been used for ten years prior to the protest by the protestant and his predecessor in interest for stock watering and domestic purposes.

On the basis of certified copies of documents submitted to the office of the State Engineer, on June 8, 1935, E. B. Cornell assigned his interest to R. S. Cornell. On April 3, 1942, the R. S. Cornell interest was assigned to Bernice Elaine Ervin, which was subsequently assigned on June 10, 1942 to Jack N. Bryan. On October 1, 1943, the application was assigned by Jack N. Bryan to W. W. Whitaker and Jessie B. Whitaker. On April 14, 1969, the application was assigned by W. W. and Jessie B. Whitaker to Ellenwood Livestock Company. To date Application 7473 remains of record in the name of Ellenwood Livestock Company.

By certified letter dated August 6, 1969, Richard R. Hanna, agent for Ellenwood Livestock Company, was informed that the State Engineer's office intended to take action on Application 7473 and it was requested that the applicant notify the State Engineer's office as to whether or not they were interested in proceeding with action on the application. A properly endorsed receipt for that letter was received by the State Engineer's office on August 8, 1969. However no reply was received. On January 16, 1970, a second certified letter was sent to Ellenwood Livestock Company, with a certified copy to their agent Richard R. Hanna. On January 17, 1970, a properly endorsed receipt was received by the State Engineer's office for the letter sent to Richard R. Hanna, and on February 5, 1970, a properly endorsed receipt was received by the State Engineer's office for the letter to Ellenwood Livestock Company. No reply was received to that letter.

By letter dated November 3, 1975, the Lander County Assessor's office was requested to inform the State Engineer's office of the status of the parcel of land on which Application 7473 is located. The reply from the Assessor's office indicated that the land is presently owned by the Federal Government. By letter of November 7, 1975 to the Bureau of Land Management, it was requested that information be provided regarding the present holder of grazing rights on the land on which Application 7473 is located. By reply letter received November 26, 1975, the Bureau of Land Management indicated that the holder of grazing rights for that parcel of land is Jack Van Sickle of Stateline, Nevada.

By certified letter dated May 26, 1976 to Mr. Van Sickle and to his agent Julian C. Smith, Jr., it was requested that the State Engineer's office be informed as to whether or not they were interested in pursuing action on Application 7473. Although Mr. Van Sickle controls the range on which Application 7473 is located, he was unable to reach agreement with Ellenwood Livestock Company for the assignment of the application into his name. Consequently by letter dated June 2, 1976, from Mr. Julian C. Smith, Jr., it was indicated that "Mr. Van Sickle strongly opposes the issuance of any water permits to Ellenwood Livestock Company from springs located on

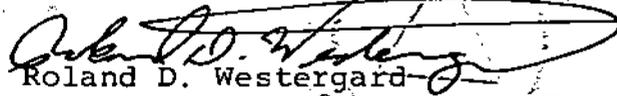
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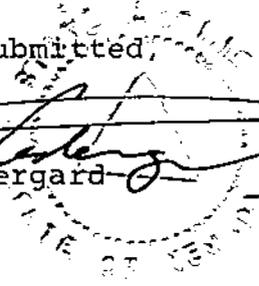
Mr. Van Sickle's range. So long as the Bureau of Land Management's records indicate that the springs are on Mr. Van Sickle's range, we feel that it would be impossible for Ellenwood Livestock Company to make beneficial use of the water."

RULING:

Application 7473 is herewith denied on the grounds that the applicant does not own or control the place of use and has not demonstrated an intent or capability to place the water sought to be appropriated to beneficial use, and that the granting of a permit under said application would be detrimental to the public interest.

Respectfully submitted,


Roland D. Westergard
State Engineer



RDW/BAR/bs

Dated this 15th day

of February, 1977.