

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

IN THE MATTER OF APPLICATION 58526)
FILED TO APPROPRIATE WATER FROM)
THOMAS SPRING, IN THE CRESCENT)
VALLEY HYDROGRAPHIC BASIN (054),)
EUREKA COUNTY, NEVADA.)

RULING

5112

GENERAL

I.

Application 58526 was filed on February 5, 1993, by Palisade Ranch, Inc. to appropriate 0.01 cubic feet per second of water from Thomas Spring for the stock watering of 200 cattle and domestic use within Lot 9 of Section 36, T.31N., R.50E., M.D.B.&M. The proposed point of diversion is described as being located within Lot 2 of Section 4, T. 30N., R. 51E., M.D.B.&M.¹

II.

Application 58526 was timely protested by the United States Department of Interior, Bureau of Land Management (BLM) on the following grounds:¹

1. The spring source is located on private land. BLM contributed \$750 to a pipeline development from this spring in 1964. The places of use are on public land and BLM has an easement for the subject private land. It is BLM policy to acquire partial interest in the water right when the Federal government has made a contribution to a water development.

2. Thomas Spring provides water to two grazing allotments. Palisade Ranch, Inc., and Julian Tomera Ranches allotments, both need the water for proper livestock distribution.

3. BLM will withdraw our protest if we are given partial interest in this water right.

¹ File Number 58526, official records in the Office of the State Engineer.

III.

Application 58526 was timely protested by Julian Tomera Ranch's-Stonehouse Division, Tom and Patsy Tomera on the grounds that the spring is on their private ground and they own the water rights.¹

FINDINGS OF FACT

I.

Application 58526 was protested by Julian Tomera Ranch's Stonehouse Division on the grounds that its point of diversion describes a spring that is located upon private ground owned by the protestant. This contention was verified by information provided by the Eureka County Assessor's office, which identifies Julian Tomera Ranches as the owner of the land containing Thomas Spring.¹ The State Engineer finds that the point of diversion requested under Application 58526 is located upon land that is not controlled by the applicant.

II.

A water right permit is typically issued under a set of conditions that further defines the manner in which water can be appropriated for a beneficial use. One of the most common conditions placed on a permit issued for appropriation of surface water, is a provision that the issuance of the permit does not grant the permittee egress and ingress to the permitted point of diversion. Access to a water source which is located upon private land not controlled by the applicant must be obtained through understandings and agreements between the parties. The official records in the Office of the State Engineer do not contain such an agreement between the applicant and Julian Tomera Ranches. The State Engineer finds that the applicant does not have access to the spring source requested for appropriation under Application 58526.

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

III.

Application 58526 requests an appropriation of water from a surface source, which is located upon private land not controlled by the applicant. The State Engineer concludes that without proper access, the water requested under Application 58526 cannot be placed to its intended beneficial use.

IV.

Application 58526, if approved, would grant the applicant a water right on a parcel of land that it neither controls nor has been given access to use. The State Engineer concludes that under these circumstances the approval of Application 58526 would threaten to prove detrimental to the public interest.

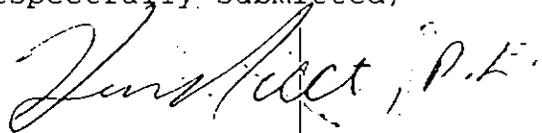
² NRS chapter 533.

³ NRS § 533.370(3).

RULING

Application 58526 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest. No ruling is made on the merits of the Bureau of Land Managements protest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/MB/jm

Dated this 7th day of
March, 2002.