

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

IN THE MATTER OF APPLICATION )  
7828 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF SECURIA )  
SPRING WITHIN THE PINE VALLEY )  
HYDROGRAPHIC BASIN (53), )  
EUREKA COUNTY, NEVADA. )

RULING

# 5154

GENERAL

I.

Application 7828 was filed on July 17, 1926, by W<sup>m</sup> H. Brennen to appropriate 0.25 cubic feet per second of water from Securia Spring for stockwatering purposes within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 5, T.26N., R.49E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of said Section 5.<sup>1</sup>

II.

The current owner of record of Application 7828 is Fernando Segura.<sup>2</sup>

III.

The application was timely protested by Flora Dean Hobart and Ethel Dean Hussey on the following grounds:

1. That there is no unappropriated water in the source designated in said application, from which application is made for a permit to appropriate water thereof. That for more than twenty-one years last past, and prior to the filing of said application, all the waters from and of said source has been appropriated by protestants and their predecessors in interest, and diverted and applied to beneficial uses, towit, irrigation, water livestock and domestic purposes.
2. That to approve said application and to issue a permit thereunder or thereon would create a cloud upon the property rights of protestants in and to the use of all the water from or in said source, and thereby invade and impair the vested property rights of protestants.

<sup>1</sup> File No. 7828, official records in the Office of the State Engineer.

<sup>2</sup> File No. 7759, deed filed April 21, 1930, official records in the Office of the State Engineer.

3. That protestants have a subsisting right to water range live stock at the particular place or source, mentioned in said application, and in sufficient numbers to utilize substantially all that portion of the public range readily available to live stock watering at such place or source of water supply, named or designated in said application.

4. That the right and use applied for in said application, if approved or granted, will enable the applicant or proposed appropriater [sic] to deprive the protestants, who are the owners of an existing water right in the particular place or source of water supply, mentioned in said application, and in different places or sources of water supply in such proximity to the place or source mentioned in said application, of the grazing use of said portion of the public range, or to substantially interfere with or impair the value of such grazing use and of such water right, all in violation of the Statute of Nevada, in such case made and provided.<sup>1</sup>

### FINDINGS OF FACT

#### I.

On September 5, 1930, a letter was received by the Office of the State Engineer from Mr. Segura requesting the withdrawal of all applications to appropriate water standing in his name. Mr. Segura goes on to list Applications 7825, 7826, 7827, 7829, and 7835. Initially, the State Engineer included Application 7828 in the applications to be withdrawn by the applicant. Later, it was decided that Application 7828 could not be withdrawn because it was not specifically listed in the letter of September 5, 1930.<sup>3</sup> The State Engineer finds that Mr. Segura intended to withdraw Application 7828, but the withdrawal could not be effectuated due to the omission of the Application's number in the letter of September 5, 1930.

#### II.

The last correspondence in Application 7828, is from Field Engineer Albert Quill. Mr. Quill offered the following comments:

Discussed this filing with Fernando Segura September 4, 1930.

He has purchased the Blair interests in Antelope Valley and does not care about this filing for himself, but was thinking of deeding it to Chas. Allison who has purchased the Murphy interests in this locality.

Owing to the condition of the roads in this vicinity, I was unable to make a field investigation, but it is in a range used by Mrs. Hobart for

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<sup>3</sup> File No. 7825, official records in the Office of the State Engineer.

years and is a short distance from her Permit No. 7425, and from what is known as the "Horse Ranch".

As the approval of this application would interfere with the rights of Mrs. Hobart I recommend the application be denied.

Upon examination of records on file with the State Engineer, no deeds were filed to change the ownership from Fernando Segura to Chas. Allison. The State Engineer finds that Fernando Segura is no longer interested in pursuing Application 7828. The State Engineer also finds that Permit 7425, Certificate 1723 still exists and would be impaired by the issuance of Application 7828.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>4</sup>

#### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>5</sup>

- 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.

The State Engineer concludes that it would prove detrimental to the public interest to approve an application where the applicant has expressed disinterest in pursuing said application. The State Engineer also concludes that approval of the application would conflict with existing rights.

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<sup>4</sup> NRS chapter 533.

<sup>5</sup> NRS § 533.370(3).

RULING

Application 7828 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest and would conflict with existing rights. No ruling is made on the merits of the protest.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/TW/jm

Dated this 25th day of  
September, 2002.