

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

IN THE MATTER OF APPLICATION)
5893 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF COLD)
VALLEY RESERVOIR WITHIN THE)
COAL VALLEY HYDROGRAPHIC)
BASIN (171), LINCOLN COUNTY,)
NEVADA.)

RULING
5158

GENERAL

I.

Application 5893 was filed on December 6, 1919, by W.J. Schofield, W.U. Schofield, and M.F. Schofield to appropriate 5 acre-feet annually of water from Cold Valley Reservoir for stockwatering purposes within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, T.1N., R.59E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, T.1N., R.59E., M.D.B.&M.¹

II.

Application 5893 was timely protested by the Sharp Land and Cattle Company on the grounds that approval of Application 5893 would impair the protestant's existing vested rights.¹

FINDINGS OF FACT

I.

Nevada Revised Statute § 533.365(3) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to appropriate the public waters of the State of Nevada. The State Engineer finds that a hearing is not necessary for this application.

II.

Application 5893 was filed to appropriate surface water from a reservoir located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, T.1N., R.59E., M.D.B.&M. Upon examination of

¹ File No. 5893, official records in the Office of the State Engineer.

maps on file in the Office of the State Engineer, the State Engineer finds that the actual location of the reservoir is on public land in portions of Section 12 and Section 13, T.1N., R.59E., M.D.B.&M.^{2,3} 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 5893, there are no additional permitted, vested or reserved water right filings appurtenant to this reservoir.

III.

Under the provisions of NRS § 533.503(1), the State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock upon the public land unless the applicant for the permit is legally entitled to place livestock on the public lands for which the permit is sought. By information received on August 22, 2002, the United States Department of the Interior, Bureau of Land Management informed the State Engineer that the point of diversion is within the Coal Valley Lake Allotment and only two permittees have current grazing privileges in said allotment. The permittees are Charles Wadsworth and Robert Steele. The State Engineer finds that the applicant is not legally entitled to place livestock upon the public lands compromising the point of diversion and place of use under Application 5893. The State Engineer finds to approve a permit for stockwatering purposes 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 of the subject matter of this action and determination.⁴

II.

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

- A. there is no unappropriated water at the proposed source;

²*Nevada Map Atlas*, Fifteenth Edition, Nevada Department of Transportation, Revised 2000.

³ Timpahute Range, Surface Management Status Map, United States Department of the Interior, Bureau of Land Management, 1996.

⁴ NRS chapter 533.

⁵ NRS § 533.370 (3).

- 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 the applicant is not the current range user and does not have access to the reservoir water source; therefore, the approval of Application 5893 would threaten to prove detrimental to the public interest.

RULING

Application 5893 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 claims by the Sharp Land and Cattle Company.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 25th day of
September, 2002.