

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

IN THE MATTER OF APPLICATION)
13454 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF STRAWBERRY)
NO. 3 SPRING WITHIN THE NEWARK)
VALLEY HYDROGRAPHIC BASIN)
(154), WHITE PINE COUNTY,)
NEVADA.)

RULING

5179

GENERAL

I.

Application 13454 was filed on July 26, 1950, by Bonnye V. Hooper to appropriate 0.5 cubic feet per second (cfs) of water from Strawberry Spring No. 3 for stockwatering purposes within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, T.21N., R.55E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 27.¹

II.

The application was timely protested by Donald D. Eldridge on the following grounds:

That the granting of said application would invade and impair the prior vested rights of Protestant; that it would impair and conflict with the value of existing rights; that it would be against public policy to grant said application, and contrary to statute; that said Protestant and his predecessors in interest have for more than forty (40) years last past used and grazed the area surrounding said applied for appropriation, and that the granting of said application would interfere with the customary use of Protestant in his grazing of said areas; that the proposed site of said appropriation is likewise at a point used by Protestant in moving from one part of the public domain to another, and from one livestock range to another.

WHEREFORE, Protestant prays that the application be denied and that the use of the water herein claimed by Protestant be confirmed and that an order be entered establishing said right and for such other relief as the State Engineer deems just and proper.¹

¹ File No. 13454, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

By letter dated October 27, 1950, the U.S. Department of Interior, Bureau of Land Management (BLM) advised the Office of the State Engineer that Application 13454 was for a spring on the Eldridge allotment. The BLM recommended the application not be approved.¹ The applicant, by letter dated January 19, 1951, was advised of the BLM letter recommending disapproval and was informed, "...it would seem proper that this application be denied."¹ By letter dated February 12, 1951, applicant Bonnye V. Hooper wrote to then State Engineer Alfred Merrit Smith requesting a thirty (30) day delay to "...talk this over with Beverly, my son, first."¹ The State Engineer wrote Bonnye V. Hooper the following reply on February 15, 1951:¹

This will acknowledge your letter of recent date concerning Strawberry No. 3 Spring that you applied for under Application 13454 and which was protested by Donald D. Eldridge.

Pursuant to your request, we will not take any action on this application for awhile. However, as I pointed out in our letter of the 19th ultimo, according to the Bureau of Land Management this spring is not located on your grazing allotment but rather located on the Eldridge allotment. If this is true, to grant you a permit under said application would certainly be of no advantage to you insofar as you do not have the right to use the range around said spring; but on the other hand could well cause trouble. It has been the practice of this office not to grant permits for stockwatering purposes when such permits would interfere with the orderly administration of the range area by the Bureau of Land Management.

I trust that your son is recovering from his illness.

The State Engineer's letter of February 15, 1951, is the last correspondence with the applicant on file in Application 13454. There is no evidence on file in Application 13454 to contest the BLM assertion that the spring is on the Eldridge's allotment. Furthermore, by facsimile dated October 17, 2002, the Ely Field Office of the BLM certified that Donald D. Eldridge is the current permittee for the subject grazing allotment.¹ The State Engineer finds that the applicant, Bonnye V. Hooper, is not the authorized range user at the point of diversion described in Application 13454. The State Engineer finds to approve a permit for stockwatering purposes when the applicant is not

authorized to use the water source would threaten to prove detrimental to the public interest.

II.

The State Engineer finds that sufficient time has passed for the applicant to decide whether to pursue this application. The State Engineer finds that it is not in the public interest to postpone action on this application indefinitely.

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.

The State Engineer concludes that it would prove detrimental to the public interest to approve an application where the applicant has expressed no interest in pursuing the application. The State Engineer also concludes that the applicant is not the current range user and does not have access to the Strawberry Spring No. 3 water source; therefore, the approval of Application 13454 would threaten to prove detrimental to the public interest.

² NRS chapter 533.

³ NRS § 533.370(3).

RULING

Application 13454 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 protest.

Respectfully submitted,


HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 22nd day of

November, 2002.