

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

IN THE MATTER OF APPLICATION 5608 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS FROM COTTONWOOD CREEK WITHIN )  
THE SOUTH FORK OWYHEE RIVER AREA )  
HYDROGRAPHIC BASIN (35), ELKO )  
COUNTY, NEVADA. )

**RULING**

**#5211**

**GENERAL**

**I.**

Application 5608 was filed on July 14, 1919, by Frank A. Schmidt to appropriate 1.6 cubic feet per second of water from Cottonwood Creek for irrigation and domestic purposes within Lots 2 and 3 of Section 10, T.40N., R.50E., and Lots 1 and 2 of Section 18, T.40N., R.51E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 10, T.40N., R.50E., M.D.B.&M.<sup>1</sup>

**II.**

The application was timely protested by the Union Land and Cattle Company on the following grounds:<sup>1</sup>

That the said Union Land & Cattle Company filed Application No. 5391, for 3.2 second feet of water out of the said Cottonwood Creek, on February 15, 1919. And that it is the intention of the said Union Land & Cattle Company to divert and put to beneficial use all of the said 3.2 sec. ft. applied for. And that it will take all of the water in said Cottonwood Creek, which is the same creek as as [sic] mentioned under application No. 5608, to furnish the 3.2 sec. ft. applied for under Application No. 5391. And further, if said Application No. 5608, is granted that it will materialy [sic] damage and aggrieve the said Union Land & Cattle Company.

**FINDINGS OF FACT**

**I.**

On March 30, 1921, the State Engineer documented that no action could be taken on Application 5608 because there were a number of prior filings for the waters of Cottonwood

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<sup>1</sup> File No. 5608, official records in the Office of the State Engineer.

Creek and for the waters of the South Fork of the Owyhee River, and therefore, further investigation was necessary. The State Engineer finds since that time the applicant has not expressed any interest in pursuing Application 5608.

**II.**

In 1972, apparently an inquiry was made by an attorney from Elko, Nevada, as to water rights appurtenant to certain lands.<sup>1</sup> The State Engineer's response through Ross de Lipkau, Hydraulic Engineer, of June 1, 1972, indicated that several of the files referenced in response to the inquiry have major places of use outside the land described in the inquiry. In December 1972 and January 1973, the State Engineer informed the attorney from Elko, Nevada, that Application 5608 could not be assigned to his client, the Packers, because the place of use under the application was not on his client's deed. The State Engineer finds since 1921 no interest in Application 5608 has been expressed by the applicant.

**III.**

On November 21, 2002, the Elko County Assessor's Office was contacted regarding the status of the lands described under the place of use of Application 5608. According to the Elko County Assessor's Office, the lands are privately held in the name of Ellison Ranching Company.<sup>1</sup> Ellison Ranching Company has never requested assignment of Application 5608 into its name. The State Engineer finds that to issue a permit for irrigation on lands not controlled by the applicant would threaten to prove detrimental to the public interest.

**CONCLUSIONS**

**I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>2</sup>

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<sup>2</sup> NRS chapter 533 and 534.

**II.**

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>3</sup>

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights; or
- C. 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 does not own or control the lands described under Application 5608. The State Engineer further concludes that to grant an application to appropriate the public waters where the applicant does not own or control the lands would threaten to prove detrimental to the public interest.

**RULING**

Application 5608 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 claims.

Respectfully submitted,



*Hugh Ricci, P.E.*

HUGH RICCI, P.E.  
State Engineer

HR/TW/d1

Dated this 10th day of  
February, 2003.

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<sup>3</sup> NRS § 533.370(3).