

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

IN THE MATTER OF APPLICATION)
17545 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF CLIFF SPRING)
WITHIN THE WHITE RIVER VALLEY)
HYDROGRAPHIC BASIN (207), WHITE)
PINE COUNTY, NEVADA.)

RULING

5242

GENERAL

I.

Application 17545 was filed on April 23, 1958, by Kenneth and John Gubler to appropriate 0.15 cubic feet per second of water from Cliff Spring for stockwatering purposes within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T.11N., R.63E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T.11N., R.63E., M.D.B.&M.¹

II.

By deed filed September 18, 1958, Kenneth Gubler and John Gubler assigned a 1/3 interest in Application 17545 to Albert Gubler.

III.

Application 17545 was timely protested by Laverne Whipple on the following grounds:¹

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 Protestants and their predecessors in interest have for more than fifty (50) years last past used and grazed the area surrounding said purported appropriation, and that the granting of said application would interfere with the customary use of Protestants' grazing of said areas.

FINDINGS OF FACT

I.

Application 17545 was filed to appropriate surface water from Cliff Spring located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T.11N., R.63E., M.D.B.&M. The State Engineer finds that a determination was made through an examination of the records in the Office

¹ File No. 17545, official records in the Office of the State Engineer.

of the State Engineer that with the exception of Application 17545, there are no additional permitted, vested or reserved water right filings appurtenant to this spring.

II.

Under the provisions of NRS § 533.503, 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. The BLM informed the State Engineer on January 28, 2003, that the point of diversion and place of use is within the Brown-Knoll Allotment and the current range user is Steve Carter. The State Engineer finds that the applicant is not legally entitled to place livestock upon the federal lands compromising the point of diversion and place of use under Application 17545. The State Engineer finds to approve a permit for stockwatering 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.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 the applicant is not the current range user for the allotment containing the water source; therefore, the approval of Application 17545 would threaten to prove detrimental to the public interest.

² NRS chapter 533.

³ NRS § 533.370 (3).

RULING

Application 17545 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.

Respectfully submitted,


Hugh Ricci, P.E.
State Engineer

HR/TW/jm

Dated this 9th day of
May, 2003.