

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

IN THE MATTER OF APPLICATIONS)
44390 AND 44391 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE WITHIN THE)
STEPTOE VALLEY HYDROGRAPHIC BASIN)
(179), WHITE PINE COUNTY, NEVADA.)

RULING

#5273

GENERAL

I.

Application 44390 was filed on September 3, 1981, by Clifford H. Herman and J. J. Salvi to appropriate 0.3 cubic feet per second (cfs) of water from an underground source for stockwatering and domestic purposes within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T.22N., R.63E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 24.¹

II.

Application 44391 was filed on September 3, 1981, by Clifford H. Herman and J. J. Salvi to appropriate 0.3 cfs of water from an underground source for stockwatering and domestic purposes within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 16, T.23N., R.63E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 16.²

¹ File No. 44390, official records in the Office of the State Engineer.

² File No. 44391, official records in the Office of the State Engineer.

III.

Applications 44390 and 44391 were timely protested by Gordon V. and Irene T. Foppiano on the grounds that the applicant resides in Fortuna, California, has a small amount of acreage in Cherry Creek, but he has no range rights or livestock. Therefore, he should not be allowed to appropriate water for stockwatering on the public lands. The well is in a common allotment that is used in common with J. J. Salvi and if the well is going to be used for stockwatering, it should be used in common. ^{1,2}

FINDINGS OF FACT

I.

By a letter dated December 9, 2002, the State Engineer's office requested the applicants advise the State Engineer's office if they were still interested in the issuance of these applications. By letter dated December 12, 2002, one of the applicants, Clifford H. Herman, advised the State Engineer's office that they were still interested in the issuance of these applications. ^{1,2}

II.

By a letter dated December 31, 2002, the State Engineer's office requested an update from the Bureau of Land Management (BLM) Ely Field Office regarding the current range users within the place of use described under Applications 44390 and 44391. By a letter from BLM dated January 23, 2003, the State Engineer's office was advised that the owners of the above listed applications are "no longer grazing permittees on the BLM Ely District." ^{1,2}

III.

Nevada Revised Statute § 533.503 provides that the State Engineer shall not issue a permit unless the applicant for the

permit is legally entitled to place the livestock on the lands for which the permit is sought. The State Engineer finds that the applicants are not legally entitled to place livestock on the public lands for which the permits are sought.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁴

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights;
- C. the proposed use conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use threatens to prove detrimental to the public interest.

III.

Under the provisions of NRS § 533.503, the State Engineer cannot approve applications filed to appropriate water for stockwatering purposes upon public lands unless the applicant is legally entitled to place the livestock on the lands for which the permit is sought. Information supplied by the proper federal regulatory agency indicates that the applicants of Applications 44390 and 44391 are not permitted to graze livestock upon the lands described within the place of use of the subject applications. The State Engineer concludes that it would not be in the public interest to approve applications to

³ NRS chapters 533 and 534.

⁴ NRS § 533.370(3).

appropriate water for stockwatering purposes upon public lands to applicants who are not the current federal range user.

RULING

The protest to Applications 44390 and 44391 is hereby upheld in part. Applications 44390 and 44391 are hereby denied on the grounds that to approve an application for stockwatering purposes on a source where the applicants are not the current range user and cannot demonstrate the ability to place the water to beneficial use would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/RD/jm

Dated this 29th day of

August, 2003.